136-338

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1019. ~~345~~ 92

BERTRAND SALOY, PLAINTIFF IN ERROR,

vs.

SIMON BLOCH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 27, 1886.

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a *Transcript of Record.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

BERTRAND SALOY, Plaintiff in Error,
vs.
SIMON BLOCH, Defendant in Error. } No. 10540.

E. Howard McCaleb, for plaintiff in error; William S. Benedict, for defendant in error.

Writ of error returnable to the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, 1886.

1 *Petition. Filed* 21 *April*, 1884.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

SIMON BLOCK
v.
BERTRAND SALOY. } No. 10540.

To the honorable circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana:

The petition of Simon Block, an alien, subject of the Emperor of Germany, residing in this city, with respect represents—

That Bertrand Saloy, a citizen of the State of Louisiana, residing in the parish of Orleans, is justly and truly indebted unto your petitioner in the full sum of $6,266.23, with interest and costs, for this, to wit:

2 That heretofore, to wit, on the 26th day of January, 1883, your petitioner entered into a contract with Pierre B. Dragon and Athanase Dragon, both citizens of this State, by act before Andrew Hero, Jr., notary, to furnish funds necessary for the cultivation and furnishing of necessary supplies to a plantation in the parish of Plaquemines, in the State of Louisiana, known as "Monsecours" plantation, for and during the year 1883, in consideration of the interest and commissions stipulated to be paid in said act.

Your petitioner further represents that at said date the said plantation was leased by the said Pierre B. and Athanase Dragon from said Bertrand Saloy, and the said Bertrand Saloy appeared in said act and made himself a party to said agreement, bound himself by said act and said agreement to carry out the terms and conditions thereof, and did waive in favor of your petitioner and remit in the favor of petitioner any and all superior rights and claims that

3 he had or might have against said plantation, its buildings, improvements, agricultural implements, etc., and the crop to

be raised thereon during the year 1883, as the lessor or landlord thereof, to the end that said land might be cultivated, the advances for such cultivation thereof be paid to your petitioner, the necessary amounts advanced and to be advanced to gather and market the crop thereof to be refunded your petitioner, and the balance received from said crop, after the deduction of all due and legal claims, charges, and expenses due by said landlord to the said Pierre B. and Athanase Dragon had been deducted therefrom, should be paid over to the said Bertrand Saloy.

Now, your petitioner further represents that, in disregard of the said contract and in violation of the same, illegally and unjustifiably, the said Bertrand Saloy did, on the 1st day of December,
4 1883, proceed, by action before the honorable the 24th judicial district court in and for the parish of Plaquemines to a suit and seizure of each and every of the buildings, etc., of the said Dragons upon the said plantation, the growing crop thereon, and the crop in process of manufacture of a value exceeding petitioner's claim, and did place the sheriff of said parish in possession thereof, to the great injury and detriment of your petitioner, in total disregard and in violation of his contract as aforesaid before said Andrew Hero, Jr., notary as aforesaid, whereby and by reason whereof your petitioner was injured in a sum exceeding said sum hereinbefore set forth.

Now, your petitioner further represents that, so acting illegally and in violation of his contract as aforesaid, the said Bertrand Saloy did thereafter and in said cause as aforesaid obtain an order from the court in which he had issued the writs as aforesaid authorizing him to bond the said property so seized as aforesaid, did illegally
5 take possession thereof, did sell the same and convert the proceeds thereof to his own use as aforesaid without payment of the amount due to your petitioner, as hereinbefore set forth, being the balance due upon the advances made by your petitioner to the said Pierre B. and Athanase Dragon under his aforesaid contract, which balance fully appears by and through the annexed detailed and specified account thereof, together with the two notes identified with the said act and account, to which the said Bertand Saloy was a party as aforesaid, all of which are annexed to this petition and made part thereof.

Your petitioner further represents that he is informed, believes, and so charges that at the date of the seizure as aforesaid so made by the said Bertrand Saloy, and of the conversion of the property so seized as aforesaid to his own use, that the said Pierre B. and Athanase Dragon were not indebted to the said Bertrand Saloy in any sum of money whatsoever; that the property so taken and
6 converted to his own use by said Bertrand Saloy was, by his act and agreement and contract before the said Hero, notary, liable and subject to the claim and demand of your petitioner in the amount as aforesaid, being the balance due upon the advances made under said contract, which has not been repaid to your petitioner by the said Pierre B. and Athanase Dragon, who are without means or property so to do, or the said Bertrand Saloy; that the said acts of

the said Bertrand Saloy are illegal, unjust, and malicious in the premises, and that by his having so taken possession of the said crop, having incurred the expenses incident to his stoppage of the business of the said plantation, the demoralization of the hands employed thereon, his removal of the said crop and the machinery wherewith to make the same from the said plantation, he deprived the said Pierre B. and Athanase Dragon of all power to comply with their contract with your petitioner as aforesaid, and
7 has injured and damaged your petitioner in a sum far exceeding the sum so due by the said Dragons as aforesaid, and is responsible to your petitioner under and by reason of the facts and circumstances aforesaid in the amount so due and set forth in said account current and said notes hereinbefore referred to, and the same is hereby claimed of the said Bertrand Saloy.

Wherefore your petitioner prays, the premises considered, a citation of the said Bertrand Saloy, and, after due proceedings had, for judgment against him in sum of $6,266.23, with eight per cent. per annum thereon from the 10th day April, 1884, with costs, and for all general relief.

(Signed) W. S. BENEDICT,
Att'y for Pet'r.

Exhibit Attached to Petition. Account Current. Filed 21st April, 1884.

See page 71 of this record.

8 2. *Notes Filed with Petition. Filed April* 21, 1884.

$2,500. NEW ORLEANS, LA., *January 26th,* 1883.

On the first day of November, eighteen hundred and eighty-three, after date, we, jointly and *in solido,* promise to pay to the order of Simon Bloch, at his office in this city, the sum of two thousand five hundred dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity; if not then paid, until final payment.

PIERRE B. DRAGON.
ATHANASE DRAGON.

Ne varieteur.
New Orleans, Jan'y 26, 1883.

ANDREW HERO, *Not. Pub.*

$2,500. NEW ORLEANS, LA., *January 26th,* 1883.

On the fifteenth day of November, eighteen hundred and eighty-three, after date, we, jointly and *in solido,* promise to pay to the order of Simon Bloch, at his office in this city, the sum of two thousand five hundred dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity; if not then paid, until final payment.

PIERRE B. DRAGON.
ATHANASE DRAGON.

Ne varieuter.
New Orleans, Jan'y 12th, 1883.

ANDREW HERO, *Not. Pub.*

9 *Defendant's Exceptions. Filed May 3d, 1884.*

U. S. Circuit Court, 5th Circuit, Eastern Dist. of La.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. —.

Now unto this honorable court comes defendant, by his undersigned attorney, and, for exceptions to plaintiff's petition and demand, says—

1st. That said petition discloses no cause of action against this exceptor.

2nd. That at all events plaintiff cannot, by his own showing, maintain this action until he shall have first obtained a judgment against Pierre B. Dragon & Athanase Dragon, who are necessary parties defendant to this suit.

3rd. That the proceedings had and judgment rendered in the case of B. Saloy *vs.* P. B. Dragon and Athanase Dragon, No. 617 of the docket of the 24th judicial district court of Louisiana in and for the parish of Plaquemines, cannot be questioned collaterally nor in the manner herein attempted; that plaintiff can only resort to an appeal or action of nullity to set aside and revoke said proceedings and judgment which must be instituted and carried on in the
10 State courts of La., and over which this court has no jurisdiction whatever.

4th. That this exceptor's liability, if any there be, on the release bond executed by him in said suit of B. Saloy *vs.* P. B. Dragon and Athanase Dragon, No. 617 of the 24th jud'l district court for the parish of Plaquemines, cannot be litigated, passed upon, or enforced in the mode and manner herein attempted.

5th. Exceptor specially pleads the judgment rendered in said suit entitled B. Saloy *vs.* Pierre B. Dragon and Athanase Dragon, No. 617 of the docket of the 24th jud'l district court for the parish of Plaquemines, La., as *res judicata* of the necessity for and validity of the writ of provisional seizure therein issued, and also as conclusion of the legality, validity, and rank of the privilege therein asserted and the demand made and judicially recognized in said cause, and the same cannot be collaterally assailed in this court. Exceptor herewith files as part hereof the records of the above-entitled suit.

Wherefore defendant prays that these exceptions be sustained and plaintiff'- suit dismissed with costs, & for general relief.

E. HOWARD McCALEB,
Attorney for Defendant.

11 Exhibit attached to defendant'- exception. Record entitled B. Saloy *vs.* Pierre B. Dragon and Athanase Dragon, No. 617 of the docket of 24th judicial district court for the parish of Plaquemines, La. Filed May 3rd, 1884. See pages from 87 to 189 of this record.

12 *Continuance of Exception.*

Extract from Minutes.

NEW ORLEANS, SATURDAY, *May 3rd*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

SIMON BLOCH
vs
BERTRAND SALOY. } No. 10540.

By consent of counsel herein the defendant's exceptions are fixed for trial on Saturday, 10th inst., at 11 o'clock a. m.

Continuance of Exception.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *May 10th*, 1884.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

By consent of counsel the exception herein is continued to Saturday, 24th inst., at 11 a. m.

Continuance of Exception.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *May 24th*, 1884.

Court met pursuant to adjournment.
13 Present: Hon. E. C. Billings, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

By consent of counsel the exception herein is continued to the 28th inst., at 11 a. m.

Exception Submitted.

Extract from Minutes.

NEW ORLEANS, WEDNESDAY, *May 28th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edw'd C. Billings, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

This cause came on to be heard before the court upon the excep-

tion to the petition, the parties having in open court waived the jury; and, after hearing the pleadings, evidence, and argument, the court took time to consider.

Order. Exceptions Overruled & 10 D'ys to File Answer.

Extract from Minutes.

NEW ORLEANS, TUESDAY, *December 9th*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

14 SIMON BLOCH *vs.* BERTRAND SALOY. } No. 10540.

This cause came on to be heard at the last term of the court on defendant's exceptions to the petition of plaintiff, and was argued by counsel. On consideration whereof it is now here ordered and decreed by this court that said exceptions be overruled, and that defendant be allowed ten days from this date to file his answer herein.

Answer. Plea in Reconvention. Filed Dec. 17th, 1884.

United States Circuit Court, Fifth Circuit, Eastern Dist. of La.

SIMON BLOCH *vs.* BERTRAND SALOY. } No. 10540.

Now into this honorable court comes Bertrand Saloy, defendant, by his undersigned attorney, and for answer to plaintiff'- petition pleads a general denial to each and every allegation therein contained, except as may be so far hereinafter specially admitted.

Defendant specially denies that the suit instituted by him against Pierre B. and Athanase Dragon in the 24th judicial district court, entitled Bertrand Saloy *vs.* P. B. Dragon & Bro., No. 617 of the
15 docket of said twenty-fourth judicial district court in and for the parish of Plaquemines, was in violation of any agreement made by respondent with plaintiff, or that respondent's acts therein were injurious or detrimental to plaintiff, or were in any way illegal, unjust, and malicious, as falsely averred by him; but, on the contrary, plaintiff expressly and impliedly approved and ratified respondent's acts and proceedings in said suit, furnished the sheriff with funds for the cultivation of the "Monsecours" plantation, the harvesting and manufacture of the crop after the same was provisionally seized in said suit, and subsequently received from the sheriff the amounts so advanced by him, which were paid by respondent, and, having received a portion of the benefits and fruits of said suit, is now estopped from contesting the legality and validity of the proceedings had therein.

And now, assuming the character of plaintiff in reconvention, defendant avers that on the 16th day of September, 1882, he purchased from John B. Levert the tract of land known as the Monse-

cours plantation, situated in the parish of Plaquemines, on the left bank of the Mississippi river, at about thirty-five miles below the city of New Orleans, together with the buildings and im-
16 provements thereon, machines, mill, engines, apparatus of the sugar-house, mules, stock, cattle, oxen, carts, wagons, farming utensils and implements of husbandry, and all articles of personal property thereto attached or used in the working and cultivation thereof; and also, 2d, a certain other tract of land, together with the buildings and improvements thereon, forming part of the "St. Sophie" tract, situated in the parish of Plaquemines, on the left bank of the Mississippi river, measuring ten arpents, more or less, front by a depth of forty arpents, closing about sixteen and a half degrees in the rear; all of which will more fully appear from a duly certified copy of said act of sale passed before A. Hero, Jr., notary public, of the city of New Orleans, on the 16th day of September, 1882, herewith filed and made a part of this petition in reconvention, marked Exhibit "A."

That the aforesaid property was purchased by reconvener subject to the terms and conditions of a certain lease thereof made by John B. Levert unto Pierre B. Dragon, under date of Feb'y, 1882, expiring Dec. 31st, 1882.

That on the 19th day of February, 1881, by act passed before Andrew Hero, Jr., a notary public, of the city of New Orleans,
17 Jules Lapene did lease and hire unto Pierre B. Dragon, for the term of five (5) years, to be computed from the 1st of January, 1881, & terminating on the 1st Dec., 1885, the above-described "Monsecour" plantation, together with the buildings, appurtenances, machinery, wagons, farming utensils, implements of husbandry, 30 mules, two horses, &c., at an annual rental of $4,800 per year, payable on the 1st of October of each and every year, in evidence whereof the said Pierre B. Dragon, lessee, did make and execute his 5 promissory notes, each for the sum of $4,800, drawn by him to the order of and endorsed by himself and Athanase Dragon, as surety, dated New Orleans, La., 19th Feb'y, 1881, and payable at the office of Buch and Levert, in said city, on the 1st of October, fixed in each of the years 1881, 1882, 1883, 1884, and 1885, with 8 per cent. interest from maturity until paid, which notes were paraphed by said notary to identify them with said act, as will more fully appear from said act of lease from Jules Lapene to P. B. Dragon before Andrew Hero, Jr., notary, on the 19th February, 1881, here referred to for greater certainty, and copy to be produced on trial of this cause; that subsequently your reconvenor, having become the purchaser and owner of said property, the following agreement
18 was annexed to said lease:

"NEW ORLEANS, LA., *Feb'y* 1, 1883.

B. Saloy is hereby admitted to be the lessor, by subsequent purchase that he has effected of the within-described plantation.

(Signed) PIERRE B. DRAGON.

Witness-:

ANDREW HERO, JR.,

JNO. J. WARD."

That on the 26th of Jan'y, 1883, the said Pierre B. Dragon, acting for himself and as agent of Athanase Dragon, made a contract with Simon Bloch, the plaintiff, by act before Andrew Hero, Jr., notary public, to furnish him with necessary supplies and moneys to be used for the purchase of supplies and hiring laborers to plant, cultivate, sow, gather, and manufacture the crops of rice, sugar, molasses, and other products to be made or raised on Monsecours plantation during the year 1883, and for that purpose contracted a loan of $7,500.00 of and from Simon Bloch, for which they gave three notes, of $2,500 each, by them drawn to the order of Simon Bloch, on the 15th Oct., 1883, 1st Nov., 1883, & 15th Nov., 1883, with 8% interest from maturity until paid, and, to secure the same, granted a lien and privilege on the crops of rice, sugar, & molasses and other products that may be planted, grown, raised, and gathered on said Monsecours plantation during the year 1883 for the full sum of $15,000; that in said act reconvener
19 intervened and consented that his claims and demands as lessor of the aforesaid Monsecours plantation should be subordinate and inferior in rank to the claims and privileges of said Block as the furnisher of supplies or for advances furnished under said contract, and that said Bloch should be paid and reimbursed from the crops of 1883, made on said place, the full amount of his advances, without regard and in preference to the demands of reconvener for the rental of said plantation, provided, however, that 350 sacks of seed rice should remain and be left on said plantation out of said crop; all of which will more fully appear from said act before Hero, notary, passed on the 26th Jan'y, 1883, a duly certified copy of which is herewith filed and made part hereof, marked Exhibit C.

That on the 1st of February, 1883, your reconvener leased unto Pierre B. Dragon & Bro., by act under private signature, for a term of three (3) years, the St. Sophie tract, having a front of ten (10) arpents by 40 arpents deep, for an annual rental of two hundred barrels of first quality of rough rice, to be delivered to reconvener or his agent on the 1st of Oct. of each year during the con-
20 tinuance of said lease.

That the rental due reconvener for the St. Sophie tract for the year 1883 was, by reconvener's direction, shipped to said Simon Bloch, who promised to pay over to petitioner the proceeds thereof, to wit, three hundred and fifty dollars; that, although repe-teadly acknowledging his indebtedness unto reconvener for said sum, during and since the month of Nov., 1883, he has so far failed and neglected to pay the same, notwithstanding amicable demand.

That said P. B. Dragon and Athánase Dragon were very heavily involved, insolvent, and unable to pay their debts, and in Oct. 1883, two of their creditors, to wit, B. J. West & Son and Jos. David, who had instituted suits against them, sequestered and seized one hundred barrels of rice and a threshing-machine subject to reconvener's landlord privileges, and also the privilege of said Simon Bloch; all of which will more fully appear from the records in the suits ent. B. J. West & Sons *vs.* P. B. Dragon & Bro., No. 597, & J. P. David *vs.*

P. B. Dragon & Bro., No. — of the docket of the 24th ju'al district court, parish of Plaquemines, here referred to as part hereof, and copies to be produced on the trial of this cause; that in this
21 predicament your appearer and reconvener applied to said Bloch to prevent the spoliation and destruction of the property of said P. B. Dragon & Bro., which was subject to their lien, privilege, and pledge.

That at first said Bloch promised and consented to make common cause with reconvener and to enforce their claims together judicially, but subsequently declined so to do, saying that he had no further interest in the matter, having been paid the amount due him by P. B. Dragon & Bro. for his advances and supplies.

That thereupon, after a delay of several weeks, reconvener was compelled to act alone for the protection of his own interest, which action was taken by him with the knowledge, consent, and approval of said Bloch. Reconvener then filed a third opposition in the suit of B. J. West & Sons *vs.* P. B. Dragon & Bro., No. 597 of the docket of the 24th jud'l district court, parish of Plaquemines, which was finally maintained and your reconvener's lessor's lien recognized after appeal to the court of appeals for the fifth circuit, and from which reconvener realized the sum of two hundred and twenty-four dollars.

That on the 27th of Nov., 1883, reconvener instituted suit
22 on two (2) of the rent notes held by him, obtained provisional seizure of the property, subject to his lien as lessor, and finally judgment against the said Pierre B. Dragon and Athanase Dragon—1st, for the sum of four thousand eight hundred dollars, less the sum of two thousand and twenty-five dollars, paid on account Dec. 23rd, 1882, and the further sum of $1,026.94, paid on account Nov. 10th, 1883, with 8% from 1st Oct., 1882, until paid, and, 2d, the sum of $4,800, with 8% from 1st of Oct., 1883, until paid — 10% att'y fees upon said amounts, with lessor's lien and privilege upon all the moveables found upon and attached to Monsecours plantation; that your reconvener, after said provisional seizure, bonded the property seized; that a large number of laborers filed oppositions in said cause, claiming a superior lien and privilege to reconvener on said crop or the proceeds thereof seized by reconvener, and their claims to the extent of $1,158.60, eleven hundred and fifty-eight dollars and sixty cents, have been allowed by the court—all of which will more fully appear from the record in said suit, entitled B. Saloy *vs.* P. B. Dragon and Athanase Dragon, No. 617 of the docket of the 24th jud'l dist. court in and for the
23 parish of Plaquemines, here referred to as part hereof.

That reconvener has sold the crop and property bonded by him, and, after deducting costs, charges, and claims, there only remains a balance of $1,258.28 to be applied on account of said his judgment, leaving a balance due to him for the rent of said property recognized by the said payment of six thousand and seventeen (6,017) dollars, and for which sum he is entitled to judgment in reconvention against said Simon Bloch for the following reasons, viz: That subsequent to the contract of Jan'y 26th, 1883, between said Simon

Bloch and Pierre B. and Athanase Dragon, marked Exhibit "C," in which reconvener intervened, it was stipulated, promised, and agreed that said Simon Bloch, after receiving the amount of his advances from the proceeds of said rice, sugar, & molasses, should pay over the balance in his hands to your reconvener in extinguishment of the rent notes held by him; that said Simon Bloch has totally failed and neglected to comply with said agreement; that he only furnished and advanced to the said Pierre B. and Athanase Dragon necessary supplies to make, gather, and manufacture said crops on Monsecours plantation under said contract the sum
24 of twelve thousand ($12,000) dollars, and that he received from said Pierre B. and Athanase Dragon and disposed of rice, sugar, molasses, and other products exceeding the sum of nineteen thousand ($19,000) dollars in value, from which, after deducting the amount of his advances, leaves a balance of more than seven thousand ($7,000.00) dollars in his hands, proceeds of said crops, which he withholds from your petitioner in violation of his promise and agreement, and reconvener is entitled to judgment against said Simon Bloch to the extent of six thousand and seventeen dollars, balance due him for rent of said above-described property.

Wherefore he prays that plaintiff's demand be rejected and dismissed with costs, and that he do have and recover judgment against said Simon Bloch in reconvention for the sum of six thousand three hundred and sixty-seven dollars, interest, and costs, and for all general and equitable relief.

E. HOWARD McCALEB,
Att'y for Defendant.

EXHIBIT "A" with Answer. Filed Dec. 17, 1884.

STATE OF LOUISIANA, *Parish and City of New Orleans:*

25 Be it known that on this seventeenth day of September, eighteen hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, herein representing Andrew Hero, Jr., also a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, temporarily absent from this parish and State, under authority of the Governor of this State, as appears by his certificate annexed to an act passed in this office on September 12th, 1882, and in the presence of the witnesses hereafter named and undersigned, personally came and appeared John B. Levert, of this city, who declared that, for the consideration and on the terms and conditions hereinafter expressed, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over unto Bertrand Saloy, also of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and
26 possession thereof, all the rights, title, interest, property, possession, share, claim, and demand of said John B. Levert in and to the following-described property, viz:

1st. A tract of land or plantation, together with the buildings and improvements thereon, machines, mill, engines, and apparatus of the sugar-house, mules, stock, cattle, oxen, carts, wagons, farming utensils, and implements of husbandry, and all articles of personal property thereto attached or used in the working and cultivation thereof, and all rights, ways, privileges, and appurtenances thereunto belonging, situated in the parish of Plaquemines, in this State, on the left bank of the Mississippi river, at a distance of about thirty-five miles below the city of New Orleans, known and designated as the "Monsecours plantation," and measuring thirty-nine arpents and twenty-five toises front on said river Mississippi by forty arpents in depth, all, more or less, being bounded above by lands formerly belonging to Juan Rivas, now or lately the property of Burbridge & Miller, and below by the portion of the St. Sophie plantation formerly belonging to P. A. B. Lesseps and hereinbelow secondly described.

27 2d. A certain tract of land, together with the buildings and improvements thereon and all rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, forming part of the "Ste. Sophie" tract, situated in the parish of Plaquemines, in this State, on the left bank of the Mississippi river, measuring ten arpents, more or less, front on said river Mississippi by a depth of about forty arpents, closing about sixteen and a half degrees in the rear, bounded above by the Monsecour plantation, above described, and below by lands now or formerly belonging to Charles Goffally, and being composed of the several lots numbered thirty-five to forty-four, inclusive, on a plan of said St. Sophie plantation made by C. Uncas Lewes, surveyor, on November 4th, 1870, and annexed for reference to an act passed before E. Bouny, a notary, in this city, on January 25th, 1872; which said property was acquired by said Levert, as the last and highest bidder thereon, at a public sale thereof made by the sheriff of the parish of Plaquemines, in this State, on the seventeenth day of September, eighteen hundred and eighty-one, under and by virtue of two several writs of seizure

28 and sale to said sheriff directed by the honorable twenty-fourth judicial district court of the State of Louisiana in and for the parish of Plaquemines, at the suits of Eulalie Soulie *vs.* Jules Lapene, Nos. 264 and 265 of the docket of said court, as per the two several deeds of sale therefor granted by said sheriff in the premises, under date of September 17, 1881, of registry in the clerk's office of said parish of Plaquemines, in Book 23 of conveyances, folios 350 and 355, and in Book B of sheriff sales of said clerk's office.

It is distinctly understood and agreed to by and between the parties hereto that said John B. Levert shall not be subject to any warranty as regards the title of the hereinabove-described real estate or against any claims, mortgages, or other incumbrances existing against the same, and that said Levert only subrogates said purchaser to such right, title, and interest in and to the aforedescribed real estate and appurtenances as he may have acquired under and by virtue of the aforesaid sheriff's sales, and substitutes the present purchaser in his place and stead as if he, said purchaser, had

29 purchased at said sheriff's sales, with all liabilities attendant thereon and without any warranty against the said Levert.

The said purchaser, by these presents, takes cognizance of this fact; declares himself well acquainted with the nature of the claim or title of said vendor in and to the herein-conveyed property, at his own risk and peril, and forever release and discharges the said vendor, his heirs and assigns, of any and from all obligations to warrant and defend said property from any claims and demands now existing or that may hereafter exist against same, or from any defect of the title of said vendor thereto, and not even for a restitution of the price herein paid in case of loss or eviction:

To have and to hold the said property and appurtenances unto the said purchasers, his heirs and assigns, forever, with full substitution and subrogation to all rights and actions of warranty of said vendor against all former owners or proprietors thereof.

The said John B. Levert moreover subrogates the said Bertrand Saloy to all his rights, interests, privileges, claims, actions, and demands of every nature and kind whatsoever which he has or may have accruing under and by virtue of the annexed instru-
30 ment of writing, bearing — the seventeenth day of September, eighteen hundred and eighty-one, executed between said John B. Levert and Jules Lapene, of this city, hereby substituting said Bertrand Saloy to the same and any and all rights, liens, privileges, actions, or recourses secured by or resulting from said agreement or promise of sale, with full power and authority to exercise and enforce the same to the same extent that the said John B. Levert might or could do if this assignment and subrogation had never been made or executed.

This sale is made and accepted for and in consideration of the total price and sum of twenty-seven thousand nine hundred and fifty-six $\frac{77}{100}$ dollars, which said sum the said purchaser has paid cash in ready current money at the execution hereof, and in the presence of the undersigned notary and witnesses, unto the said vendor, who hereby acknowledges the receipt thereof and grants said purchaser a full acquittance and discharge in the premises.

According to the annexed certificate of the recorder of mortgages in and for the parish of Plaquemines, in this State, bearing date the fifteenth September instant, it will be seen that the herein
31 described and conveyed property is free from all mortgages or other encumbrances in the name of said John B. Levert, save the mortgage he granted in favor of Louis Bush, by an act passed before the undersigned notary on the 25th May, 1882, to secure the sum of twenty-five thousand dollars and interest, and the privileges for parish and State taxes of 1882, which said mortgage has been cancelled and erased.

It is hereby expressly agreed and understood by and between the parties to this act that the above real estate is sold subject to the terms and conditions of the annexed lease made by said John B. Levert unto Pierre B. Dragon, of the parish of Plaquemines, in this State, under date of February 1st, 1882; that the rent due thereunder on September 15th, 1882, is payable and to be paid, one-half unto said John B. Levert and the other half unto said Bertrand Saloy, as also the rent due thereunder on or before October 1st, 1882,

shall be paid, one-half unto said John R. Levert and the other half unto said Bertrand Saloy.

It is expressly agreed and understood by and between the parties hereto that the said vendor's firm of Bush and Levert, of this city, shall have the exclusive right to apply the net proceeds of
32 sale of all products of sugar, molasses, rice, and other products raised or gathered by said Pierre B. Dragon in the herein-conveyed real estate, and shipped by said Dragon to said firm during the present year, eighteen hundred and eighty-two, to the payment of any indebtedness which may be due now or which may become due to said firm of Bush and Levert for advances of moneys and necessary supplies furnished by said firm unto said Dragon. It is also understood and agreed to by and between the parties hereto that the proceeds of the crops of sugar, molasses, rice, and other products raised or gathered by said Dragon shall be applied to the payment of the rent due and payable on September 15th, 1882, as hereinabove stipulated, only after having deducted the amount due said firm of Bush and Levert for advances of moneys and necessary supplies furnished as aforesaid to said Dragon.

And here personally appeared and intervened herein Jules Lapene, of this city, who, after having taken cognizance of the foregoing act, and having read what is hereinbefore written, declared that he approves and ratifies the same in all its parts, consents to the sale of the above-described real estate herein made, and specially to the subrogation unto said Saloy of all the rights, actions, privileges,
33 claims, and demands of said Levert in and to the aforesaid annexed agreement or promise of sale, bearing date September 17th, 1881, and releases and discharges the said John B. Levert from any claims, actions, pretensions, damage, or injury which he, said Levert, might or could have been put into resulting from his non-compliance with the conditions and stipulations imposed upon him under the aforesaid annexed agreement or promise of sale.

Proper receipts have been produced unto me, notary, evidencing the payment of all taxes exig-ble to date against said property, save those for the present year, which are assumed and to be paid by said Bertrand Saloy.

It is hereby agreed and understood that the following articles of property now on the property herein conveyed, to wit, one thresher, one portable engine for pumps, two pumps, five oxen, six horses, two one-horse carts, six plows, one small engine, twenty-five head of cattle, are sold subject to the right of redemption and purchase in favor of P. B. Dragon & Bro., who are entitled to redeem and purchase said articles of property from said Saloy upon payment to him of the sum and price of seventeen hundred and three $\frac{10}{100}$ dollars, provided payment of said sum be made to said Saloy
34 on or before the first day of December, eighteen hundred and eighty-three.

Thus done and passed in my office, in New Orleans aforesaid, in the presence of Paul. A. Ory and John J. Ward, witnesses, both of

this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) JNO. B. LEVERT,
B. SALOY.
JULES LAPENE.

P. A. ORY.
JNO. J. WARD.

W. J. CASTELL, *Not. Pub.*,
Representing A. Hero, Jr., not. pub., absent on leave.

A true copy from the original act on file and of record in the archives of Andrew Hero, Jr., a notary public of this parish, now on leave of absence by execut-e authority.

In faith whereof I hereunto set my hand and seal, at New Orleans, Louisiana, this September 18th, 1882.

W. J. CASTELL, *Not. Pub.*,
Representing A. Hero, Jr., not. pub., absent on leave.

STATE OF LOUISIANA, *Parish of Plaquemines:*

I, the undersigned, do hereby certify that the within has been this day duly recorded in book No. 24, No. 5268, fo. 11, of conveyances in my office, this 20th day of September, A. D. 1882.

[SEAL.] O. BUTLER,
D'y Clerk, ex-officio D'y Recorder.

I agree that if J. Lapene shall pay his two notes of thirteen thousand nine hundred and seventy-eight $\frac{38}{100}$ dollars, of date of September 27th, 1882, paraphed A. Hero, Jr., notary, of date of Sept. 27, 1882, bearing mortgage on property in Terrebonne parish, as they respectively mature, that I will transfer and reconvey unto said Lapene the hereinbefore-described property that was transferred unto one J. B. Levert by act before A. Hero, Jr., notary, on 16 Sept., 1882, with the understanding, however, that interest on said notes is yet to be paid to me, and that as security for the payment of said interest, as also of said two notes, said Lapene has deposited with me the three rent notes of P. B. Dragon, due Oct. 1st, 1883, 1884, and 1885, fixed, given under act before A. Hero, Jr., notary, on 19th Feb'y, 1881.

New Orleans, Oct. 15, 1882.

B. SALOY.
JULES LAPENE.

Attest: ANDREW HERO, JR.
" S. THEREET, JR.

36 *Exhibit C (with Answer). Filed Dec. 17th, 1882.*

This exhibit copied on pages Nos. 51 to 66 of this record.

Cause Reassigned.

Extract from Minutes.

NEW ORLEANS, WEDNESDAY, *May 27th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY, } No. 10540.

On joint motion of counsel for the respective parties, it is ordered that this cause, heretofore set down for trial this day, be reassigned for Monday, 8th June, 1885, at 11 o'clock a. m.

Motion for Subp-ena. Entered and Filed June 5th, 1885.

U. S. Circuit Court, Eastern Dist. of La.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

On motion of E. Howard McCaleb, Esq., att'y for defendant, and on filing the annexed affidavit, it is ordered that plaintiff do bring into court on Monday, June 8th, 1885, at 11 o'clock a. m., his ledger, journal, cash-book, and invoice books of and for the year
37 1883, which are in his possession, and which are material in this cause.

Bertrand Saloy, being duly sworn, says that the books mentioned in the foregoing motion are material evidence on his behalf, and that he expects and intends to establish by said books the facts and allegations stated and set forth in his reconventional demand herein filed.

(S'g'd) B. SALOY.

Sworn to and subscribed before me this 5th of June, A. D. 1885.
[SEAL.] (S'g'd) G. LE GARDEUR,
Not. Pub.

Motion for Subp. Entered & Filed June 5th, 1885.

U. S. Circuit Court, Eastern District of La.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

On motion of E. Howard McCaleb, Esq., of counsel for defendant, and on filing the annexed affidavit, it is ordered that Pierre B.

Dragon, a third person, who has in his possession the pay-roll book or time-book of Monsecours plantation for the year 1883, together with the books showing the expenditures and disbursements made in cultivating and gathering the crops on said plantation for
38 the year 1883, which may be important in the decision of this cause, do bring them into court on Monday, June 8th, 1885, at 11 o'clock a. m., the day fixed for the trial of this cause.

Bertrand Saloy, being duly sworn, says that the documents and books mentioned and described in the foregoing motion are material evidence in his behalf, and may be important in the decision of this cause.

(S'g'd) B. SALOY.

Sworn to and subscribed before me this 5th of June, A. D. 1885.

[SEAL.] (S'g'd) G. LE GARDEUR,
Not Pub.

Serve on Pierre B. Dragon, Broad St., between Dabadie & Aubry streets.

Continuance.

Extract from Minutes.

NEW ORLEANS, MONDAY, *June 8th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

This cause having been called for trial, on motion of W. S.
39 Benedict, attorney for plaintiff, who suggested the absence of the attorney for defendant, it was ordered that said cause be continued until to-morrow at 11 a. m.

Continuance.

Extract from Minutes.

NEW ORLEANS, TUESDAY, *June 9th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Alex. Boarman, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

This cause was called for trial, William S. Benedict appearing for plaintiff, E. Howard McCaleb for the defendant, when the following-named jurors were sworn to well and *and* truly try the issues joined herein, viz.: 1, F. J. Odendahl; 2, C. Flotte; 3, E. L. Rillieux; 4, Jos. Fossier; 5, A. Labat; 6, L. A. Coiron; 7, Geo. Vairin; 8, F.

Varenholt; 9, B. Garcia; 10, P. L. Clement; 11, W. Heyer; 12, Geo. Voivant; and the court appointed F. J. Odendahl foreman of the said jury; and, after hearing the pleadings and the evidence
40 in part, it was ordered that the cause lay over until to-morrow at 11 a. m.

Continuance.

Extract from Minutes.

NEW ORLEANS, WEDNESDAY, *June 10th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCK
vs.
BERTRAND SALOY. } No. 10540.

This cause, as continued from yesterday, was this day resumed, and, the counsel for the respective parties, as well as the jurors empannelled in the cause, being all present, the trial was proceeded with; and, after hearing further evidence, it was ordered that said cause lay over until to-morrow at 11 a. m.

Continuance.

Extract from Minutes.

NEW ORLEANS, THURSDAY, *June 11th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCK
vs.
BERTRAND SALOY. } No. 10540.

41 This cause, as continued from yesterday, was this day resumed, and the counsel for the parties, respectively, as well as the jurors empanelled in the cause, being all present, the trial was proceeded with; and, after hearing further evidence, it was ordered that said cause lay over until to-morrow at 11 a. m.

Continuance.

Extract from Minutes.

NEW ORLEANS, FRIDAY, *June 12th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCK
vs.
BERTRAND SALOY. } No. 10540.

This cause, as continued from yesterday, was this day resumed, and the counsel for the parties, respectively, as well as the jurors em-

pannelled in the cause, being all present, the trial was proceeded with; and, after hearing further evidence, it was ordered that said cause lay over until Monday next, 15th inst., at 11 a. m., and said jurors were discharged until that date and hour.

Continuance.

Extract from Minutes.

42 NEW ORLEANS, MONDAY, *June 15th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCK
vs.
BERTRAND SALOY. } No. 10540.

This cause, as continued from last Friday, the 12th instant, was this day resumed, and the counsel for the respective parties, as well as the jurors empannelled in the cause, being all present, the trial was proceeded with; and, after hearing further evidence and the arguments of counsel for the parties, respectively, it was ordered that said cause lay over until to-morrow at 11 a. m.

Continuance.

Extract from Minutes.

NEW ORLEANS, TUESDAY, *June 16th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCK
vs.
BERTRAND SALOY. } No. 10540.

This cause, as continued from yesterday, was this day resumed, and the counsel for the respective parties, as well as the jurors
43 empannelled in the cause, being all present, the trial was proceeded with; and, after hearing the arguments of counsel, it was ordered that said cause lay over until next Monday, the 22d instant, at 11 a. m.

Cause Submitted.

Extract from Minutes.

NEW ORLEANS, MONDAY, *June 22nd*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

This cause, as continued from Tuesday, the 16th instant, came on further to be heard, and the counsel for the respective parties, as

well as the jurors empannelled in the cause, being all present, the trial was proceeded —; and, after receiving a charge from the court, the jury retired to deliberate on their verdict, and the marshal was thereupon directed by the court to keep the jury in charge, and, in case they should agree upon a verdict, they shall seal the same and be present next morning at the opening and reading of the same.

44 *Verdict.*

Extract from Minutes.

NEW ORLEANS, TUESDAY, *June 23rd*, 1885.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

The jury empannelled in this cause, having on yesterday delivered a sealed verdict, this day appeared in open court, and thereupon the said verdict was opened and read in their presence by the clerk, and it is in the following words and figures, to wit:

We, the jury, find in favor of plaintiff in the sum of thirty-eight hundred & twelve & $\frac{30}{100}$ dollars, less three hundred & twelve & $\frac{30}{100}$ dollars for one hundred sacks rice from St. Sophie plantation.

	3,812 30
Less	312 30
	$3,500 00

New Orleans, June 22nd, 1885.

F. J. ODENDAHL, *Foreman.*

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

45 *Motion for New Trial. Entered & Filed June 25th*, 1885.

United States Circuit Court, Eastern District of Louisiana.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

On motion of E. Howard McCaleb, Esq., of counsel for Bertrand Saloy, defendant and plaintiff in reconvention—

Ordered by the court that plaintiff, Simon Bloch, do show cause, on Monday, the 29th day of June, 1885, at 11 o'clock a. m., why a new trial should not be granted hereon on the following grounds, viz:

1st. Because the verdict and judgment herein are contrary to the law and the evidence.

2nd. Because the verdict and judgment do not pass upon and dis-

pose of the issues raised by the pleadings and evidence. The jury have failed to act upon defenant'- reconventional demand.

3rd. Because the jury disobeyed and disregarded the instructions ef the court contained in the charge, "not to allow anything for supplies necessary to prevent or close the crevasse on Monsecours plantation," and to take out the crevasse expenses, shown by the testimony of P. B. Dragon to amount to the sum of six thousand
46 ($6,000) dollars for labor, materials, and lumber, and which were erroneously charged for in plaintiff's account as necessary supplies for raising the crop and wrongfully allowed by the jury.

4th. Because the court erred in its charges to the jury, as set forth in defendant's bills of exception.

5th. Because on the evidence a verdict should have been rendered rejecting plaintiff's demand and in favor of defendant and against plaintiff for the entire of his reconventional demand.

Marshal's Return.

Received June 25th, 1885, by the U. S. marshal and, June 25th, 1885, I served a copy of the within rule on Simon Bloch, through his attorney, W. S. Benedict, Esq., by delivering the same to him in person in the city of New Orleans.

E. S. CURRY,
D'y U. S. Marshal.

Rule for New Trial Submitted.

Extract from Minutes.

NEW ORLEANS, *June 29th*, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

This cause came on to be heard on the motion of defendant for a new trial herein, and was argued by counsel for the purposes, respectively, and submitted, when the court took time to advise.

47 *Order Contin'g Rule for Rehearing to be Tried Before Judge Billings.*

Extract from Minutes.

NEW ORLEANS, FRIDAY, *July 3d*, 1885.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

In this cause the court decides adversely to defendant on all the

grounds for a new trial herein urged, with the exceptions of the second ground, to wit: "Because the verdict and judgment do not pass upon and dispose of the issues raised by the pleadings and evidence, the jury having failed to pass upon defendant's reconventional demand;" which matter and the final disposition of the motion for new trial herein made on said grounds is continued until next term for hearing and decision before his honor Judge Edward C. Billings.

48 *Bill of Exceptions No.* 1. *Filed 9th June*, 1885.

United States Circuit Court, Eastern District of Louisiana.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10450.

Be it remembered that on the trial of this cause, the plaintiff having offered and filed in evidence to sustain the averments contained in his petition—

1st. Contract, Exhibit C, hereto annexed, being a certified copy of an act passed before Andrew Hero, Jr., notary public, of the city of New Orleans, on the 26th day of January, 1883, signed by Pierre B. Dragon, B. Saloy, and S. Bloch; and

2nd. A statement, marked Exhibit A 9, hereto annexed as part hereof, together with the testimony of S. Bloch tending to prove the correctness of said statement, and that he had received the sum of $16,323.20, net proceeds of the rice, sugar, and molasses grown, raised, harvested, and manufactured on the Monsecour plantation, in the parish of Plaquemines, during the year 1883, by said P. B. Dragon & Bro.

And defendant's counsel requested the court to charge the jury that the contract marked Exhibit C, hereto annexed, made
49 between P. B. Dragon and Bro. and Simon Bloch and B. Saloy, giving said Simon Bloch a lien and privilege on the crops grown, raised, and cultivated on Monsecour plantation during the year 1883, having in said act been fixed and limited at the sum of $15,000, no other or greater amount than that stipulated could be covered by the said contract to the prejudice of B. Saloy, and that said Simon Bloch, plaintiff, had and could have no lien or privilege on the crop of Monsecours plantation for the year 1883 or its proceeds as against defendant, Bertrand Saloy, for more than $15,000, although P. B. Dragon & Bro. might be liable personally for any excess over said sum to the said Simon Bloch; that if the evidence adduced by plaintiff proved that he had received more than $15,000 from the net proceeds of the crop of 1883, his privilege as vendor was extinguished under the contract marked Exhibit C; that Simon Bloch could not have been compelled to have advanced more than $15,000 under the contract, marked Exhibit C, to P. B. Dragon & Bro., nor could he have been held responsible in damages either by Dragon and Brother or by Bertrand Saloy for refusing to advance more than

that sum; that there was no mutuality, and, consequently,
50 that, although one promise may be a good consideration for another promise, there must be mutuality of engagements, otherwise the contract is null in so far as there is no binding obligation as against one or the other of the contracting parties.

But the court refused and declined to give the charge as requested above, and, on the contrary, in instructing the jury charged as follows: "It is not a question whether—*i. e.*, the necessary supplies are limited to $15,000 or not. On that point I charge you that on a fair reading of this contract they are not limited to $15,000. A privilege is something that it is not necessary for you and I to agree to. The law will fix our relations as to that. The law only requires the amount to be fixed when a third party comes in and claims rights. Now, these contracting parties need not have said anything about privilege as to this amount, but they did limit it to the amount that the factor was, for all the necessary supplies furnished to Dragon & Bro., entitled to. In agreeing to this matter the language, as I interpret it, permits me to say conclusively that, so far as the law is concerned, you are not limited in ascertaining Bloch's rights in this matter because of that $15,000, and on Bloch's de-
51 mand I charge you that the law applying to the agreement between Saloy, Bloch, and Dragon forces you to make Saloy stand aside, so far as he may have claims against Dragon, until Bloch has satisfied all claims, whether they are over or under $15,000."

To which charge as given, and to which refusal to charge as requested, counsel for defendant, while the jury was still at the bar, and before they had retired, then and there duly excepted, and tendered this his bill of exceptions for signature, and the same is allowed and signed.

ALECK BOARMAN, *Judge.*

EXHIBIT C.

Filed with Bill of Exceptions No. 1, June 9th, 1885.

STATE OF LOUISIANA, *Parish and City of New Orleans:*

Be it known that on this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh, before me, Andrew Hero, Jr., a notary public in and for the parish and city of New Orleans, State of Louisiana,
52 duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Pierre B. Dragon, herein acting in his own name and behalf, as also in his capacity as the duly authorized agent and attorney-in-fact of Athanase Dragon, both residents of the parish of Plaquemines, in this State, which said Pierre B. Dragon declared in his said respective capacities that, requiring to have goods and necessary supplies furnished and moneys actually advanced to be used for the purchase of necessary expenses and laborers to plant, culti-

vate, sow, gather, and manufacture the crops of rice, sugar, molasses, and other products to be made or raised during the present year, eighteen hundred and eighty-three, on the "Monsecours plantation," situated in the parish of Plaquemines, in this State, on the left bank of the Mississippi river, at about thirty-five miles below the city of New Orleans, bounded above by lands now or formerly belonging to Burbridge & Miller, and below by the "Ste. Sophie plantation," they, said Messrs. Dragon, have contracted a loan of the sum of seventy-five hundred dollars of and from Simon Bloch, of
53 this city, and as evidence of such loan the said Pierre B. Dragon has furnished three certain promissory notes for the sum of two thousand five hundred — each, made and subscribed by said Pierre B. Dragon and Athanase Dragon, jointly and *in solido*, under date of this day, all bearing interest from and after maturity, if not then paid, at the rate of eight per cent. per annum, until final payment, and payable to the order of said Simon Bloch, at his office in this city, as follows: One thereof on the fifteenth day of October, eighteen hundred and eighty-three; another thereof on the first day of November, eighteen hundred and eighty-three, and another thereof on the fifteenth day of November, eighteen hundred and eighty-three; which said notes, after having been paraphed by me, said notary, for identification herewith, were delivered unto said Simon Bloch, who hereby acknowledges the receipt thereof.

And in order to more fully secure the punctual payment of all such advances and moneys advanced or to be advanced as aforesaid, costs, charges, expenses, commissions, and attorneys' fees, and of the aforesaid — in principal and interest, a special lien and mortgage or privilege is hereby granted and recognized for the full sum of fifteen thousand dollars on any and all crop or crops of rice,
54 sugar, molasses, and other products that may be planted, grown, raised, and gathered or made and manufactured during the year eighteen hundred and eighty-three on the hereinbefore mentioned and described plantation, tracts and parcels of land, and this instrument is hereby directed to be recorded, in order to preserve and make the same public, so as to operate and bear upon the crops of the year eighteen hundred and — grown and produced on the aforesaid plantation.

Furthermore, for the same purpose and for the same amount, the entire crop made and grown on the aforesaid plantation known as Monsecours during the year eighteen hundred and — is hereby pledged and pawned unto the said Simon Bloch, — heirs and assigns, and the said Pierre B. Dragon, for himself and his said constituent, do- hereby agree and consent that any and all laws of this State pertaining to privileges for supplies furnished or money advanced and used for the purchase of necessary supplies and the payment of necessary expenses, laborers, etc., to carry on a farm or plantation shall and do hereby expressly refer and have full force and effect, and also bind- and obligate- himself and his said constituents to ship and consign the entire crop of rice, sugar, molasses, and other
55 products made, produced, and gathered on the hereinbefore mentioned and described plantation know as Monsecours

during the year eighteen hundred and eighty-three to the said mortgagee in the city of New Orleans whenever required or notified so to do by him or his assigns, in default of which said mortgagee or his representatives or assigns are authorized at once to sequester the said crops or the proceeds thereof, in whosoever hands the same may be, regardless of any sale or transfer thereof; to ship said rice, sugar, molasses, and other products, if in kind, to said Simon Bloch, who is empowered to sell the same at the current market prices and hold the net proceeds, after deduction of all costs, charges, expenses, commissions, and attorneys' fees; which net proceeds shall stand in lieu of the property sequestered, the said Pierre B. Dragon, for himself and his said constituent, hereby waiving and relinquishing their right to bond and the delay granted therefor, and consenting that the sequestration bond shall stand in place of the release bond required by law; and, moreover, agreeing that the sequestration shall issue and that judgment shall be entered at the option
56 of the holder of said notes or either of them without notice or citation of any kind, hereby expressly confessing judgment and waiving all notices and citations required by law, and consenting that no appeal shall be taken from any of the proceedings or from the judgment entered; as also that no *no* notice of any of the proceedings or of any judgment entered shall be required, this being their written answer and confession of judgment for the purposes herein stated.

It is further distinctly agreed and covenanted that should any part or portion of the crops thus pawned and pledged be shipped to any other house or be diverted in any other way, or should the said Pierre B. Dragon and Athanase Dragon refuse or neglect to ship when notified so to do, then and in that case the note given as aforesaid and all amounts due on open account shall become due, demandable, and exigible at once, and the holder or holders thereof are hereby fully authorized and empowered to seize and sequester the crops or take out any other process they may think advisable against the same wherever found.

57 For that purpose the said Pierre B. Dragon, for himself and his said constituents, do hereby waive all exceptions to jurisdiction, and by this their answer acknowledge and recognize jurisdiction of the court before which process may be sued out for the purpose of subjecting such crops to the rights of the holder or holders of said note or open account, and confess judgment therefor, so as to hold the said crops subject thereto.

And it is expressly agreed and understood by and between the parties hereto that the said mortgagee shall have the exclusive right to apply the net proceeds of sale of all products shipped and all payments of money made to him to the payment of any indebtedness which may be due now, or which may hereafter become due, to him by the said Pierre B. Dragon and Athanase Dragon upon open account, or to the debt secured and intended to be secured by these presents, according to his view of the exigency of the case; that such application may be made at such time and in such manner as said mortgagee may elect; that no application of such pro-

ceeds of sale or money to the payment of any debt on open account which may at any time be due to the said mortgagee by the said Pierre B. Dragon and Athanase Dragon shall impair, lessen,
58 or prejudice the indebtedness evidenced by note and secured or intended to be secured by this instrument, or the security herein and hereby provided therefor; and that said mortgagee shall have full and undisputed right to impute payments as he may determine to whatsoever debt may be due him by said Pierre B. Dragon and Athanase Dragon.

And in case it should be necessary to place the said notes or either of them in the hands of an attorney for adjustment, compromise, settlement, suit, or for any other purpose, they promise and obligate themselves to pay the fees of the attorney employed at the rate of ten per cent., to be computed on the principal and interest.

And the said Pierre B. Dragon, for himself and his said constituent, further declare- that he does hereby expressly confess judgment for the amount of the aforesaid notes, with interest as aforesaid, attorney-' fees to be computed as aforesaid, costs, charges, expenses, commissions, waive citation, and all legal delays, as well as all appeals and writs of error, this being their answer and acknowledgement of all indebtedness as aforesaid, as also a formal waiver
59 of all legal notices and right of appeal; and he does hereby authorize and empower the holder or holders of the said notes or either of them at once to enter judgment before any court of competent jurisdiction, without any citation or previous notice of any kind, on a mere production of a duly authenticated copy of this act for the whole or any part or portion of the said indebtedness, attorneys' fees, costs, charges, expenses, and interest, provided execution shall be stayed until the maturity of the notes sued on respectively.

As a further guarantee the said Simon Bloch is hereby authorized and empowered to insure the sugar-house, buildings, and improvements and appurtenances on the said plantation for twelve months, and longer should the said note not then be paid, for a sum not exceeding — dollars at the cost and expense of said Messrs. Dragon, and to hold the policy, which is hereby transferred and assigned to him. When the crop is being manufactured he is authorized to insure the same in store on the place, loss, if any, payable to —— at such valuation as they may fix at said mortgagee'- expense; and also to insure all goods and produce to and from said plantation at the customary rates, payable to him in case of loss. But no ob-
60 ligations is hereby contracted by the said mortgagee which would render it obligatory on him to effect such insurances, and as a compensation to said mortgagee for effecting such insurances and obtaining policies he is authorized to receive the scrip or to accept the rebate allowed, if he prefers, for his services, and the same he is to retain as his own.

It is further covenanted and agreed that the said Messrs. Dragon shall employ and pay the laborers used or engaged in the cultivation of the hereinbefore mentioned and described plantation or tract of land during the present year, upon pay-rolls duly made out and

presented to the factor in writing, on the certificate of the planter, or his manager or overseer, that the same is entirely correct and that the labor has been actually performed. And that before any wages are paid on such pay-rolls they are to be duly recorded in the office of the recorder of the parish where the plantation is situated, with subrogation to the aforesaid mortgagee, in legal form, of the rights and privileges of the laborers.

It is further covenanted and agreed that the said Messrs. Dragon hereby bind and obligate themselves to begin grinding at such time as the said mortgagee shall direct, and in default of which the said mortgagee shall be, and he is hereby, authorized, without
61 putting in default, as might be otherwise required under article 1911 of the Revised Civil Code, or any other law or laws, and without process of law, to take possession of the hereinbefore mentioned and described plantation, and to carry on the grinding operations until they are entirely completed; and that should either the stubble or the plant cane be damaged or in any manner impaired, or should any unforseen accident or fortuitous event occur, such, for instance, as a crevasse or the bad management of the plantation, endangering in any manner the crops, it shall be optional with the said mortgagee to suspend any further advances on this contract.

And it is further distinctly understood and agreed that the quantity of seed cane to be put down for next year's crop shall be fixed and determined by the said mortgagee, and that no more shall be put down than he may allow.

The said P. B. Dragon furthermore obligate- himself and his said constituent to ship to the said mortgagee all the crop of rice, sugar, molasses, and other products raised and gathered on the aforesaid "Monsecour plantation" during the present year, eighteen
62 hundred and eighty-three, guaranteeing the shipment of one hundred hogshead- of sugar, one hundred and fifty barrels of molasses, and eight thousand sacks of rice, on which the said mortgagee shall be entitled to his commissions and brokerage, whether the said quan-ity be shipped to him or not, and to charge such commissions and brokerage to the debit in account current of said mortgager, it being the intent and purpose of this agreement to secure to and pay the said mortgagee commissions and brokerage on the amount thus stipulated, whether the crop reach this quantity and amount or not, and said mortgagee being authorized to charge additional commissions and brokerage should the crop exceed the quan-ity and amount above specified, this being one of the main considerations, by reason of which the business is accepted by said mortgagee, and without which it would not have been.

And said Pierre B. Dragon, for himself and said Anathase Dragon, moreover declared that he does hereby waive and relinquish all rights and claims of homestead or exemption that may be reserved to them by law, and does, by these presents, convey and transfer the same to the said mortgagee, or any future holder or holders
63 of the hereinbefore described notes or either of them, in full and absolute ownership thereof to guarantee the payment of

the afore described notes, with all costs, charges, expenses, interest, commissions, and attorney-' fees as aforesaid; and, moreover, waive and relinquish in favor of said mortgagee or of any future holder or holders of said notes or either of them all rights and privilege of going into bankruptcy or of using the insolvent, or respite, or bankrupt laws of the United States, or of this State, or of any other State or county in which they may hereafter reside, until the whole of the indebtedness herein stipulated shall have been paid in full and extinguished, unless it be with the consent and approval of the aforesaid mortgagee or of such persons or persons as may be the holder or holders of the herein described notes or either of them, but this shall not debar the said mortgagee or such holder or holders of said notes or of either of them from the right of forcing the said Messrs. Dragon into bankruptcy or insolvency should said mortgagee or holders of said notes or of either of them elect so to do.

It is well and distinctly agreed and covenanted that the said Simon Bloch shall be entitled to charge and be expressly
64 allowed ten and a half per cent. commissions and one-half per cent. brokerage, besides the conventional interest of eight per cent. per annum (which is hereby agreed and consented to) for and on all advances which are made to said Messrs. Dragon in goods, wares, merchandise, money, or otherwise, and that the said Simon Bloch is further authorized to charge ten and a half per cent. commissions and customary brokerage for accepting, endorsing, buying, and selling, and shall receive the usual commissions of five per cent. on all sales of rice and of ten and a half per centum on all sales of sugar and molasses.

And here appeared and intervened herein Bertrand Saloy, who, after having read and taken cognizance of what is hereinbefore written, declared that he consents and agrees that his claim and demands as lessor of the aforesaid "Monsecour plantation" shall be subordinate and inferior in rank to the claims and privileges of said Bloch as the furnisher of supplies or for advances furnished under this contract; and that said Bloch shall be reimbursed from the crops of 1883 made on said place the full amount of his advances hereunder without regard and in preference to the demands
65 of said Saloy for the rental of said plantation; provided, however, that three hundred and fifty sacks of seed rice shall remain or be left on said plantation out of the crop of this year for the purposes thereof for the year 1884.

Thus done and passed in my office, in New Orleans aforesaid, in the presence of John J. Ward and Sorthene Theriet, Jr., witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) PIERRE B. DRAGON.
B. SALOY.
S. BLOCH.
ANDREW HERO, JR.,
Not. Pub.

JNO. J. WARD.
S. THERIET, JR.

STATE OF LOUISIANA, *Parish of Orleans:*

Be it known that on this twenty-sixth day of January, A. D. eighteen hundred and eighty-three, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Athanase Dragon, of the parish of Plaquemines, in this State, who declared that he has read and taken cognizance of the within and foregoing act, and approves and
66 ratifies the acts and doings of his agent, Pierre B. Dragon, therein, and invests the within and foregoing act and the acts of his said agent, Pierre B. Dragon, therein, and invests the within and foregoing act and the acts *of* doings of his said agent, Pierre B. Dragon, therein, with the like force as if the said Athanase Dragon had signed and executed the same in person.

Thus done and passed at my office, in New Orleans aforesaid, in presence of Jno. J. Ward and Sorthene Theriet, Jr., witnesses, of this city, who signed with said appearer and me, notary, on the day and date aforesaid.

(Original signed) ATHANASE DRAGON.
ANDREW HERO, JR., *Not. Pub.*

JNO. J. WARD.
S. THEREET, JR.

A true copy of the original act on file and of record in my office.
[SEAL.] ANDREW HERO, *Not. Pub.*

EXHIBIT A[9]. Filed with bill of exceptions No. 1 June 9th, 1885.

Office of Simon Bloch, cotton and sugar factor and general commission merchants, No. 42 Union street.

'83.			NEW ORLEANS, ——, 188–.			
Sept. 11.	By proceeds	200	s'ks	rice		611 13
67 "	"	"	200	"		675 48
"	"	"	500	"		1,723 94
Sept. 13.	By proceeds	300	s'ks	rice		1,039 67
" "	"	300	"			1,040 30
" "	"	200	"			691 21
" "	"	238	"			806 45
" 20.	"	368	"			1,275 30
" 29.	"	161	"			525 90
" "	"	139	"			463 66
" "	"	430	"			1,442 43
Oct. 5.	"	240	"			796 66
" 8.	"	168	"			540 87
" 20.	"	140	"			445 94
" "	"	196	"			658 93
" 22.	"	100	"			312 30
" 31.	"	65	"			198 30
" "	"	53	"			167 56
Nov. 8.	"	52	"			154 63
" 19.	By net proceeds	55	bbls.	sugar		1,011 28
" 30.	"	27	"			564 49
" "	"	15	"			319 60

Nov. 30. By net proceeds 11 bbls. sugar		230 38
" " " " 13 "		239 50
" " " " 20 bbls. mol.		186 46
Total		16,122 37
Dec. 22d. By net pro. 10 bbls. sugar		200 83
		$16,323 20

68 *Bill of Exceptions No. 2. Filed 9th June*, 1885.

United States Circuit Court, Eastern District of Louisiana.

SIMON BLOCH
vs. } No. 10540.
BERTRAND SALOY.

Be it remembered that on the trial of this cause, plaintiff having offered and filed in evidence, to sustain the allegations contained in his petition, exhibit marked A^2, hereto annexed, being account current of P. B. Dragon & Bro., Monsecours plantation, with Simon Bloch, together with the testimony of witnesses tending to prove the correctness of said account; and defendant having adduced testimony tending to prove that in said account marked Exhibit A^2 were included and charged against P. B. Dragon & Bro., as necessary supplies for making, cultivating, gathering, and harvesting the crops of sugar, molasses, and rice on the Monsecours plantation, among other things, the sum of $1,800 for the support and maintenance of the families of P. B. Dragon and Athanase Dragon during the year 1883, defendant's counsel requested the court to charge the jury that Bloch, the factor, had a privilege on the crops or their proceeds for the year 1883 only for such necessary supplies
69 and money as were advanced and used for the purpose of cultivating and harvesting the crops for said year on said plantation; that it was incumbent upon plaintiff to show that all the articles charged for and monies advanced were necessary supplies and money furnished and advanced for the purpose of making and gathering the crops of said year 1883.

That plaintiff, Simon Bloch, had no lien on the crops for the supplies he had furnished and advanced for the support and maintenance of the families of P. B. Dragon and Athenase Dragon, as said items could not be considered necessary supplies under the law of Louisiana, for which a lien and privilege is granted to the factor.

But the court refused and declined to give the charge as requested above, and, on the contrary, in instructing the jury, charged as follows: "That the presumption is they, the Dragons Brothers, are entitled to the $1,800.00 charged in Bloch's account for necessary supplies for themselves and family. If you think that 900.00 for each for necessary supplies was advanced you will allow that item of Bloch's account or such part of it as may be for necessary supplies."

70 To which charge as given and to which refusal to charge as requested the counsel for defendant duly excepted and tendered this his bill of exceptions, and the same is allowed.

(Signed) ALECK BOARMAN, *U. S. Judge.*

70½ EXHIBIT A². Filed with

71 Messrs. P. B. Dragon & Bro., Monsecours plantation, Plaque

DR.

1883.							
Jan'y	26.	To check handed P. B. Dragon		$200 00	440	19 56
	27.	" " " " "	$500 00			
	"	" invoice sund's, "Isabel"	220 91			
				720 91	439	70 34
Feb'y	1.	" check to F. Hollander	$170 00			
	"	" " P. E. Sanazin & Co	125 00			
				295 00	434	28 46
	3.	" invoice sund's, "Sunbeam"		57 23	432	5 48
	8.	" " corn & oats, "Isabel"		55 86	427	5 31
	10.	" " sundries, "		67 69	425	6 42
	13.	" check handed P. B. Dragon	50 00	50 00	422	4 69
		" cash paid A. Hero, crop lien, $10.00; record'g same, $5		15 00	"	2 06
		" cash paid A. Hero, ac't sale movables, $5; record'g same, 2.00		7 00		
	14.	" invoice sundries, Alvin		106 97	421	10 01
	19.	" " corn, oats, &c		88 38	416	8 14
	20.	" s't d'ft favor M. Vincent Marie		63 00	415	5 81
	23.	" " H. Smith		65 00	412	5 95
March	2.	" invoice corn & oats		70 29	403	6 30
	5.	" check handed P. B. Dragon	$75 00			
	"	" s't d'ft favor Wilkinson Armstrong	75 00			
	"	" " L. Leopold	127 55			
	"	" " Gustave Sordelet	151 70			
	"	" " "	54 00			
				483 25	402	43 14
	7.	" remittance per Alvin, $225; ins'ce, 28 cts	225 28			
	"	" invoice sund's per Alvin	127 07			
				352 35	400	31 28
	12.	" " corn & oats per Alvin		89 86	395	7 90
	14.	" " sund's per Alvin	$16 75			
	"	" s't d'ft favor Geo. H. Croucher	297 20			
	"	" " Gustave Sordelet	100 00			
	"	" " R. Lorio	50 00			
				463 95	395	40 52
	19.	" " Vincent Marie	25 00			
	"	" check handed P. B. Dragon	25 00			
				50 00	388	4 31
	21.	" invoice sund's, Alvin		34 89	386	3 00
	23.	" " " "		96 66	384	8 28
	29.	" s't d'ft favor Dr. T. H. Ballowe		20 00	378	1 68
April	2.	" " Wilkinson & Armstrong	$80 00			
	"	" check handed P. B. Dragon	25 00			
				105 00	374	8 72
	4.	" remittance per str. Alvin, $225; ins'ce, 28 ct	225 28			
	"	" invoice sundries	337 87			
				563 15	372	46 54
	6.	" " lumber	12 55			
	"	" s't d'ft favor G. H. Croucher	94 30			
	"	" " Gustave Sordelet	191 30			
				298 15	370	24 50
	7.	" " L. Leopold	$111 80			
	"	" " Cornelius Thomas	81 15			
				192 95	369	15 83
	11.	" invoice lumber, etc., per Alvin		140 70	365	11 44
	18.	" " coal "		555 20	358	44 15
	23.	" s't d'ft favor H. Hingle	$35 30			
	"	" " Red River & Coast Line	76 00			
				111 30	353	8 71
	28.	" check handed P. B. Dragon		50 00	348	3 87
	30.	" remittance per str. Alvin, $150; ins'c., .25	150 25			
	"	" invoice sundries, Alvin	200 73			
				350 98	346	26 99
		Over		$5,820 72		$509 39

bill of exceptions No. 2.

mines parish, in acc't with Simon Bloch, New Orleans, La. 72

CR.

1883.							
Feb'y	10.	By proceeds sales of 15 B. M.	$125	55	425	11	90
"	20.	" " " 5 "	41	25	415	3	78
April	30.	" mortgage note of $2,500, due Oct. 18, '83, disc't'd	2,289	72	346	176	08
"	"	" " 2,500, " Nov. 4, '83, "	2,280	28	"	175	31
"	"	" " 2,500, " " 18, " "	2,272	50	"	174	69
"	"	merchandise, 1 bbl. potatoes, inv. of date. not deliv'd	3	60	"		31
Over			$7,012	90		$542	07

Exhibit A²—

DR.

73

1883.								
April	30.	To amount brought over			$5,820 72	.....	$509 39
May	4.	" sight draft favor Jean Serio	$35 00				
	"	" invoice corn & oats per str. Alvin	90 24				
				125 24	342	9 50
	7.	" s't d'ft favor L. Leopold		71 55	339	5 42
	8.	" " G. H. Croucher	$155 15			
	"	" invoice sundries	123 25			
				278 40	338	20 88
	10.	" s't d'ft favor Gustave Sordelet		66 45	336	4 93
	11.	" invoice oil cake meal		161 87	335	12 06
	14.	" s't d'ft favor Red River & Coast Line		77 95	332	5 75
	15.	" " Gustave Sordelet	$90 00			
	"	" invoice sundries per str. Alvin	25 33			
				115 33	331	8 46
	16.	" " corn & oats per str. Alvin		110 33	339	8 07
	21.	" check handed them	$25 00			
	"	" s't d'ft favor H. Hingle	40 00			
				65 00	325	4 69
	22.	" " C. V. Thibaut, sheriff		20 00	324	1 44
	23.	" invoice sundries, Alvin		164 90	323	11 84
	25.	" s't d'ft favor Auguste Andre		81 30	321	5 78
	28.	" Invoice corn & oats, Alvin		94 43	318	6 64
	29.	" s't d'ft favor Vincent Marie	$27 00			
	"	" " L. Leopold	118 70			
				145 70	317	10 28
June	1.	" " Gustave Sordelet		99 00	314	6 91
	4.	" check handed them		50 00	311	3 46
	5.	" invoice sundries, "Alvin"		117 87	310	8 13
	6.	" remittance per str. Belle, $200; ins'ce, 25		200 25	309	13 73
	8.	" invoice sundries per st'r "Belle"	$69 09			
	"	" s't d'ft favor G. H. Croucher	112 60			
				181 69	307	12 42
	12.	" " Red River & Coast Line		48 45	303	3 23
	13.	" invoice sundries, "Belle"		104 45	302	6 98
	15.	" " "		22 91	300	1 53
	18.	" s't d'ft favor Gustave Sordelet		100 00	297	6 60
	22.	" invoice sundries, "Alvin"		99 46	293	6 45
	29.	" " "Belle"	$121 45			
	"	" check handed them	50 00			
				171 45	286	10 87
July	4.	" invoice sundries, "Belle"		15 93	281	1 00
	5.	" s't d'ft favor G. H. Croucher	$189 55			
	"	" " L. Leopold	225 55			
				415 10	280	25 82
	6.	" remittance, per str. Belle, $200; ins., 25 cts		200 25	279	12 40
	9.	" s't d'ft favor Red River & Coast Line	$50 95			
	"	" " J. B. Wise or bearer	10 00			
				40 95	276	2 51
	10.	" bills payable d'ft favor Deforges, Montagner & Co	2,463 81			
	"	" commission accept'g d'ft, $2,463.81, due Dec. 18th, 2½ %	61 60	.....	114	63 97
	"	" invoice sundries, per str. "Belle"	99 71			
				2,625 12	275	6 11
	12.	" s't d'ft favor H. Hingle		35 00	273	2 12
	13.	" invoice sundries per "str. Belle"		142 60	272	8 64
	18.	" s't d'ft favor Gustave Sordelet	$173 00			
	"	" invoice sundries per str. Belle	56 15			
				229 15	267	13 59
	21.	" check handed P. B. Dragon	25 00			
	"	" s't d'ft favor A. M. & J. Solari	43 90			
				68 90	264	4 06
	23.	" invoice sundries per str. Belle		210 71	262	12 28
	27.	" s't d'ft favor L. Leopold		103 50	258	5 91
	28.	" invoice sundries per str. Belle		146 37	257	8 34
	30.	" " " "		9 11	255	51
		Over		$12,837 39		$872 70

Continued.

Cr.

74				
1883.				
April 30.	By amount brought over	$7,012 90	.....	$542 07
	Over	$7,012 90		$542 07

Exhibit A²—

DR.

75

1883.							
July	30.	To amounts brought over		$12,837 39	.....	$872 70	
Aug.	1.	" invoice cylinder teeth, "Belle"		20 96	253	1 18	
	3.	" " sundries, "	41 37				
	"	" remittance per str. Belle, $150; ins'ce, 30 cts	150 30				
				191 67	251	10 71	
	8.	" s't d'ft favor G. H. Croucher	100 00				
	"	" " H. Hingle	42 50				
				142 50	246	7 76	
	10.	" invoice rice sacks, etc, "Belle"		260 25	244	14 10	
	13.	" " sundries, "	24 10				
	"	" s't d'ft favor Red River & Coast Line	39 65	63 75	241	3 43	
	15.	" invoice sundries, "Belle"		119 57	239	6 37	
	17.	" s't d'ft favor A. Le Moré	$128 00				
	"	" " Gustave Sordelet	192 75				
				320 75	237	16 91	
	20.	" invoice sundries, "Belle"		21 00	234	1 09	
	22.	" " "Alvin"		82 23	232	4 23	
	24.	" " "	23 90				
	"	" remittance per str. Alvin, $150; ins'ce, 30 ct	150 30	174 20	230	8 89	
	27.	" invoice rice sacks, etc., "Alvin"		222 21	227	11 20	
	29.	" " sundries, "	39 22				
	"	" remittance per str. Alvin, $150; ins., 30 ct	150 30				
				189 52	225	9 50	
	30.	" invoice rice sacks, etc., "Jewell"		119 43	224	5 97	
	31.	" " sundries, "Alvin"		74 79	223	3 72	
Sept.	1.	" remittance per str. Jewell, $150; ins'ce, 30 ct.	150 30				
	"	" invoice L. Lippman's, b. rendered	52 79				
	"	" " salt, "Jewell"	4 76				
				207 85	222	10 26	
	3.	" sundries, Alvin	7 32				
	"	" s't d'ft favor Frank Roder	19 50				
				26 82	220	1 32	
	5.	" " L. Leopold	67 65				
	"	" invoice sundries	24 32				
				91 97	218	10 61	
	6.	" s't d'ft favor Geo. Hardeman	50 00				
	"	" " G. H. Crouther	17 35				
	"	" " "	75 00				
	"	" " A. Lemore	51 60				
	"	" " A. M. & J. Solari	37 70				
				291 65	217	14 08	
	7.	" " J. P. Wise	16 00				
	"	" remittance per str. Alvin, $300; ins'ce, 43 ct	300 43				
	"	" invoice flour, Alvin	13 99				
				330 42	216	15 84	
	8.	" " sundries, Alvin		41 00	215	1 96	
	10.	" s't d'ft favor William Hamilton	125 00				
	"	" " Red River & Coast Line	186 55				
				311 55	213	14 77	
	11.	" " H. Hingle	40 00				
	"	" invoice rice sacks, Jewell	60 62				
				100 62	212	4 76	
	12.	" " Leeds & Co., bill rendered		27 83	211	1 31	
	13.	" " L. Lippmans, bill rendered	26 70				
	"	" " sundries, "Jewell"	89 22				
	"	" " s't d'ft favor Gustave Sordelet	144 25				
				260 17	210	12 13	
	18.	" cash handed P. B. Dragon	250 00				
	"	" s't draft favor T. P. Lewley	38 70				
	"	" invoice sundries, "Jewell"	67 70				
				356 40	205	16 22	
	21.	" " Alvin	25 11				
	"	" remittance per str. Alvin, $150; ins'c., 30	150 30				
				175 41	202	7 86	
	22.	" invoice lumber, Shote & Co.		5 54	201	27	
	26.	" s't d'ft favor L. Leopold	94 20				
	"	" " Wm. Hamilton	28 55				
				122 75	197	5 38	
		Over		$17,190 40		$1,094 53	

Continued.

CR.

76

1883.										
April	30.	By amounts brought over						$7,012 90	.....	$542 07
Sept.	11.	" proceeds of 200 sacks rice					$611 13			
	"	"	"	200	"		675 48			
	"	"	"	500	"		1,723 94			
								3,010 55	212	141 85
	13.	"	"	300	"		1,039 67			
	"	"	"	300	"		1,040 30			
	"	"	"	200	"		691 21			
	"	"	"	238	"		806 45			
								3,577 63	210	166 97
	20.	"	"	368	"			1,275 30	203	57 52
Over								$14,876 38		$908 41

Exhibit A²—

DR.

77

1883.							
Sept.	26.	To amounts brought over			$17,190 40	.....	$1,094 53
	27.	" cash handed P. B. Dragon			200 00	196	8 71
	28.	" invoice sundries per str. "Alvin"			82 12	195	3 55
Oct.	1.	" " " "			98 64	192	4 22
	3.	" s't d'ft favor A. Lemore			26 80	190	1 11
	5.	" " G. H. Croucher		107 45			
	"	" invoice zinc, "Alvin"		3 30			
					110 75	188	4 64
	8.	" " sundries, Jewell			19 17	185	78
	12.	" cash handed P. B. Dragon			20	181	80
	13.	" invoice sundries, Jewell		82 25			
	"	" remittance per str. Jewell, $1.50; ins'ce, 30		150 30			
					232 55	180	9 32
	15.	" s't d'ft favor Geo. Hardeman			75 00	178	2 97
	17.	" check handed P. B. Dragon		50 00			
	"	" telegram to E. H. McCaleb		40			
					50 40	176	1 96
	19.	" s't d'ft favor James Duffy		32 50			
	"	" " D. Mercier Sons		37 50			
					70 00	174	2 71
	20.	" " Andre Angus		30 00			
	"	" invoice sundries, "Alvin"		156 38			
					186 38	173	7 15
		" mortgage note, due 15-18 Oct., '83, unpaid, same being credited on the 30th of April, 1883			2,500 00	175	97 22
	22.	" check handed P. B. Dragon			25 00	171	95
	23.	" invoice cooperage, "Alvin"			75 90	170	2 87
	24.	" " sundries, "St. Mary"		$22 49			
	"	" s't d'ft favor Red River Coast Line		90 50			
					112 99	169	4 24
	25.	" " Gustave Sordelet		$189 80			
	"	" " L. Leopold		74 70			
					264 50	168	9 86
	27.	" " Patrick Lae		$19 35			
	"	" invoice sundries		22 23			
					41 58	166	1 55
	29.	" s't d'ft favor H. Hingle		$75 00			
	"	" " A. Lemore		27 35			
					102 35	164	3 72
	30.	" invoice sundries			96 53	163	3 51
	31.	" s't d'ft favor Wm. Hamilton			50 00	162	1 80
Nov'r	3.	" insurance on sugar, molasses, etc., $4,000, 1 mo. | d.		20 00			
	"	" invoice sundries per "str. Alvin"		49 68			
	"	" remittance per str. Alvin, $75; ins'ce, 25 cts		75 25			
	"	" s't d'ft favor G. H. Caroucher		151 90			
					296 83	159	10 49
	7.	" invoice sundries, "St. Mary"			94 04	155	3 24
	10.	" s't d'ft favor Gustave Sordelet			97 00	152	3 28
	13.	" check handed P. B. Dragon			25 00	149	83
	14.	" invoice sundries, "Alvin"			28 64	148	95
	15.	" " cooperage, "		145 17			
	"	" s't d'ft favor Angus Andre		28 00			
					173 17	147	5 65
	16.	" " Red River Coast Line		$61 00			
	"	" remittance per str. St. Mary, $150; ins'ce, 30 cts		150 30			
					211 30	146	6 85
	19.	" invoice sundries, "St. Mary"		42 30			
	"	" s't d'ft favor Geo. Hardeman		15 35			
					57 65	143	1 84
	21.	" " A. Lemore		29 70			
	"	" " Gustave Sordelet		70 45			
					100 15	141	3 13
	23.	" remittance per str. Alvin, $200; ins'ce, 30 cts		200 30			
	"	" invoice sundries, "St. Mary"		52 78			
					253 08	139	7 81
	24.	" " tobacco, "Alvin"			15 48	138	46
		Over			$22,983 40		$1,312 73

Continued.

CR.

78

1883.										
Sept.	20.	By amounts brought over					$14,876 38	.....	$908 41
	29.	" proceeds of 161 sacks rice				$525 90			
	"	" "	139	"		463 66			
	"	" "	430	"		1,442 43			
							2,431 99	194	104 84
Oct.	5.	" "	240	"			796 66	188	33 30
	8.	" "	168	"			540 87	185	22 24
	20.	" "	140	"		$445 94			
	"	" "	196	"		658 93			
							1,104 87	173	42 48
	22.	" "	100	"			312 30	171	11 86
	31.	" "	65	"		$198 30			
	"	" "	55	"		167 56			
							365 86	162	13 18
Nov.	8.	" "	52	"			154 63	154	5 30
	19.	" "	55 bbls. sugar				1,011 28	143	32 13
	30.	" "	27	"		$564 49			
	"	" "	15	"		319 60			
	"	" "	11	"		230 38			
	"	" "	13	"		239 50			
							1,353 97	132	39 71
	"	" "	20 bbls. md				186 46	132	5 46
Over							$23,135 27		$1,218 91

Exhibit A²—

DR.

79

1883.							
Nov.	24.	To amounts brought over		$22,983 40	.....	$1,312 73	
	26.	" invoice sundries per str. Alvin		12 55	136	39	
	27.	" " cooperage, etc., "		51 50	135	1 53	
	28.	" " sundries, St. Mary	$21 54				
	"	" s't d'ft favor Sam. Brock	6				
				27 54	134	83	
	30.	" " Pierre Mayoni	$32 60				
	"	" invoice sundries, St. Mary	7 78				
	"	" " potatoes, Alvin	2 81				
				43 19	132	1 26	
Dec'b'r	1.	" " roller, wheel, etc., St. Mary		46 89	131	1 37	
	3.	" renewal insurance, $4,000, on sugar & molasses 15 dd	10 00				
	"	" cash handed P. B. Dragon	5 00				
				15 00	129	43	
	5.	" " " "		5 00	127	14	
	6.	" " " "	5 00				
	"	" invoice sundries per str. Alvin	31 68				
				36 68	126	1 04	
	13.	" " " " "		29 60	119	79	
1884.							
Jan.	9.	" " " " "		35 78	92	74	
"	26.	" " " " "		26 21	75	43	
Feb'y	12.	" " " " St. Mary		24 33	58	31	
Ap'l	10.	" comm'n on defecit ship't, 3,598 s'ks rice, av'ge $4.05 each, @ 5%		728 60			
	"	" comm'n on defecit ship't 67 hhds. sugar, av'ge $80 each, @ 2½ %		134 00			
	"	" comm'n on defecit ship't 130 bbls. molas., av'ge $10, @ 2½ %		32 50			
	"	" comm'n advancing cash balance, Aug. 24th, $4,100.06, 2½ %		102 50			
	"	" interest balance in my favor, 2½ %		98 17			
				$24,433 44		$1,321 99	
1884.							
Ap'l	10.	To balance at debit new acct. up to date		$1,097 34			

E. & O. E.
New Orleans, April 10th, 1884.

SIMON BLOCK,
Per SILVA.

In addition to above balance of $1,097.34 on *per* ac. said Pierre B. & Athanase Dragon are also indebted on their two notes of $2,500 each, of Jan'y 26th, 1883, due on the 1 | 4 & 15 | 18 of Nov'r 1883, with 8% interest from their respective date—say to date	$5,000 00	
Interest on $2,500 from Nov. 4, '83, to date, 159 days	88 34	
Interest on 2,500 from Nov. 18, '83, to date, 145 days	80 55	
		5,168 89
Grand total		$6,266 23

New Orleans, April 10th, 1884.

SIMON BLOCK,
Per SILVA.

Continued.

CR.

80

1883.							
Nov.	30.	By	amounts brought over	$23,135 27	.....	$1,218 91
Dec.	22.	"	proceeds sales of 10 bbl. sugar	200 83	110	4 91
1884.							
Ap'l	10.	"	balance interest column	.....	.....	98 17
	10.	"	balance down.	1,097 34	.....	.....
				$24,433 44		$1,321 99

81 *Bill of Exceptions No. 3. Filed 9th June,* 1885.

United States Circuit Court, Eastern District of Louisiana.

SIMON BLOCH
vs.
BERTRAND SALOY } No. 10450.

Be it remembered that on the trial of this cause, the defandant having offered, introduced, and filed in evidence—

1st. The record and proceedings in the suit of B. Saloy *vs.* P. B. & A. Dragon, No. 617 of the docket of the twenty-fourth judicial district court for the parish of Plaquemines, together with writ of provisional seizure and the sheriff's return thereon, forthcoming bond, judgment rendered therein, and also the judgment of the supreme court of Louisiana in said cause No. 9264 of the docket of the said supreme court of Louisiana, marked Exhibit X and Exhibit Y;

2d. The act of lease and inventory thereto annexed, from Jules Lapene to P. B. Dragon, passed before Andrew Hero, Jr., a notary public for the parish of Orleans, on the 19th day of Febru-

82 ary, 1881, marked Exhibit U; and

3rd. Evidence tending to show and prove that P. B. Dragon & Bro., at the time of the provisional seizure issued in said suit No. 617 of the docket of the twenty-fourth judicial district court for the parish of Plaquemines, had reserved no stubble cane and had ground up all the seed cane, except enough to plant some thirty acres, and having introduced evidence to prove that the five coolers of sugar, two lots of clarified sugar, said to contain about thirty-eight barrels of sugar, provisionally seized in said suit and released on bond by the plaintiff, was the product of the seed cane cut and ground by the said P. B. Dragon & Brother on the Monsecours plantation during the year 1883, the defendant's counsel requested the court to charge the jury that the contract, marked Exhibit C, annexed to bill of exceptions No. 1, does not contain any stipulation by which defendant bound himself to refrain from suing for his rent, and that the waiver of a legal right is not to be presumed; that the judgment

83 obtained by B. Saloy, not being attacked for fraud or collusion, is *prima facie* evidence of the claim and privilege of the former; that said P. B. Dragon & Bro. having failed to pay their rent when the same fell due, the plaintiff was authorized to sue and provisionally seize; that the seed cane was immovable by destination; that the privilege of Bloch, factor, did not cover the seed cane or its proceeds; that Dragon, the tenant, had no more right to grind the seed cane and ship the sugar and molasses produced therefrom to Bloch, the factor, for sale than he had to ship and sell the mules, which were also immovable by destination; that the plantation was leased for a sugar plantation, and the seed cane formed a part of the plantation; that it was a violation of the lease for the tenant to destroy or make away with the seed cane; that the lessee's right was to enjoy the thing leased according to the use for which it was in-

tended; that in seizing and selling the sugar and molasses
84 produced from the seed cane Saloy, the defendant, was only getting the proceeds of his own property and doing no injury to Bloch, factor.

But the court refused and declined to give the charges as requested above, and, on the contrary, in instructing the jury, charged:

"Now, as to this suit of Saloy being wrongful or not, I will charge you that it is wrongful so far as it may injure Bloch, because the allegations in his petition in the suit No. —, State court (and they must stand by them), do not set up fraud between Bloch and Dragon. They do not set up a conspiracy to injure; and, unless you find the fraud proved and the conspiracy to injure, you would be warranted in concluding that in the mind and purpose of Saloy these allegations represent everything in existence at that time. I do not shut you out of going in- subsequent matters, for whilst Saloy did not bargain away his right to sue Dragon, he did say, If I should sue Dragon no injury will come to you, Bloch, and the law for-
85 bids him *him* not to bring an action against Dragon, but to adopt a remedy which may cause injury to Bloch's rights under the contract between the 3 persons named in the agreement—Saloy, Dragon, and Bloch.

"The landlord, Saloy, gave up his right to sue Dragon in any way to injure Bloch's rights unless Dragon and Block did something or was doing something to injure or defraud Saloy.

"It was contended by counsel for the defendant that under that five-year lease Dragon was to leave so many acres of seed cane and so many acres of stubble; that, as he was not leaving that amount at the end of the year, Saloy had the right to consider that lease broken and to proceed by a seizure to secure himself.' It was one of the important features of the lease; that there should be so much cane left at the end of the year 1883, and that Dragon should leave the said cane; that if he did not do so the lease would be broken. This is the position taken by defendant's counsel, but you will not
86 be troubled about that when I read this sentence from the act: 'It is fully understood and agreed that the amount of seed cane to be put down for next year's crop shall be fixed and determined by said mortgagee.' I say that that relieves me from all the anxiety I had upon the matter as to the law relied on by defendant's counsel. That provision modifies the lease between Dragon and Saloy so that it does not affect Bloch in this case. When Saloy agreed to the insertion of that article in the agreement he said to Bloch: 'I waive this portion of the lease which requires Dragon to leave so much cane for the year 1883, and so far as Mess. Saloy, Bloch, and Dragon are concerned, they are all bound by it. Block considered it fit that the cane should be put into the crucible and made sugar of, and he had the right to do so. It was so nominated in the bond.'"

To which charge as given, and to which refusal to charge as requested, counsel for defendant, while the jury were still at
87 the bar and before they had retired, then and there excepted,

and tenders this his bill of exceptions for signature, and the same is allowed and signed.

(Signed) ALECK BOARMAN, *Judge.*

EXHIBIT.

Judgment of supreme court of La., annexed to foregoing bill of exceptions No. 3.

Supreme Court of the State of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *January 19th*, 1885.

B. SALOY
vs.
B. P. & A. DRAGON. } No. 9264.

Appeal from the 24 judicial district court for the parish of Placquemines.

Mr. Justice Todd delivered the opinion and decree of the court in the words and figures following, to wit:

This case presents a controversy between the lessor of a plantation and the laborers thereon.

The plaintiff sued out a provisional seizure, and under it caused the crops on the plantation and other movable effects to be seized for the rent.

A number of the laborers and employees intervened in the
88 suit and asserted a privilege on the property seized to the lessor.

After the filing of these interventions or opposition the property seized was bonded by the lessor.

The case was tried, and from a judgment maintaining the opposition the plaintiff has appealed.

1st. The first contention of the plaintiff's counsel is that the opponents or intervenors did not demand a separate appraisement of the sugar and molasses from the other movables provisionally seized by the lessor, and that from this omission, the property having been bonded by the lessors, they had lost their privilege on the same.

It does not appear from the record that there was any judicial sale of the property made or ordered, and it is only in case of such sale of property subject to conflicting privileges that the question of a separate appraisement arises.

Besides, the condition of the bond executed by the plaintiff was to produce the property to meet the judgment or pay such
89 judgment, and even if a separate appraisement was necessary to the preservation of the opponents' privilege, there would be time enough to cause it to be made when the plaintiff, in compliance with his obligations, produced the property to meet the judgment.

The question of a separate appraisement is, therefore, prematurely raised. The interventions were seasonably filed whilst the property provisionally seized was still in the possession of the sheriff. There

was no authority for any party to the suit to cause it to be sold during the pendency of the proceedings, unless on account of its perishable condition, and no such demand for its sale was made for that cause. The opponents in their petition claimed a privilege on the property, and the plaintiff could not deprive them of their privilege or destroy the same by securing its release from the custody of the law by bonding the same. If the plaintiff desires to avail himself of the plea of a separate appraisement he should first have
90 — to produce the property, that it might be judicially sold, but should he not choose to do so, or should he already have disposed of it, he must pay the privileges of the intervenors therein as recognized to the extent, at least, that the judgment already rendered by the district court may be affirmed.

He cannot bond the property, retain it, or dispose of it, and then set up to defeat the privilege of the intervenors that no separate appraisement of the property had been demanded by them when no occasion had arisen for such demand.

We do not pretend to decide that in the event that the property had been sold under the judgment that any separate appraisement of the crops could have been necessary to the preservation or enforcement of the privileges claimed by the intervenors. It is unnecessary to decide this point.

2d. There were a number of laborers who had only been employed at the grinding season, and whose work was performed in the
91 sugar-house in the making of the sugar, and it is denied by the plaintiff's counsel that such laborers are entitled to any privilege on the crops or the movables on the plantation.

We have attentively examined the law and the articles of the code according a privilege to the laborers on plantations, and we think a fair construction of them warrants the conclusion that it was the legislative intent to confer this privilege on laborers who worked upon the crops in any and all of its stages — in the planting, cultivating, gathering, and preparing it for market, and who performed any work on the plantation required for such purpose or incident thereto. We are confirmed in this conclusion by the decision in the case of Lalare *vs.* Wiltz, 31 H., 430, which has an important bearing on this question.

We think, therefore, that the judgment allowing a privilege to this class of laborers was correct.

3d. The privileges claimed by Leopoled and Croucher as transferees of the claims of certain laborers against their em-
92 ployees are opposed on the ground that these parties were not subrogated to the privileges of the transferees, & Croucher's claim on the further ground that his debt was novated by a draft of the defendants, which was not paid and not protested.

There was no express subrogation from the laborers necessary; the transfer of their claim carried with it the transfer of the privileges as accessories thereto. C. C., 2645.

Nor was Crauther's account novated by the draft. He does not sue upon the draft, but on the account. There was no express ac-

knowledgment that the account was paid by the draft. Novation is not presumed. 31 H., 221; 32 H., 822; 34 H., 535.

4th. The claim of Jos. P. Loya for $98 is opposed on the ground that he was not a plantation laborer, but his account was for repairing the sugar-house and helping to repair the machinery, & as a night watchman in the sugar-house. It is not shown how
93 much of the account was for his services us a watchman, & it is clear that his work on the buildings and machinery mentioned gave him no privilege on the crops or movables on the place, but his privilege must be enforced against the buildings, &c., repaired under art. 3249, C. C.

This privilege was improperly allowed.

5. We think there was error also in that part of the judgment which allowed these intervenors the first privilege on all the property provisionally seized and requiring them to be paid out of the first proceeds of the same.

The 3d clause of art. 3217, C. C., confers on the lessors of immovables & the laborers employed therein a privilege on the same things—the crops and movables—but the last clause of that article & art. 3259, C. C., give- the first privilege to the laborers only on the crops, leaving the privileges for rent and labor concurrent on all the residue of the property subject thereto.

With these two corrections, we think the judgment in other respects should remain undisturbed.

94 It is, therefore, ordered, adjudged, and decreed that the judgment of the lower court be amended by rejecting the privilege allowed therein to Jas. G. Loya on the property provisionally seized for ninety-eight dollars, and by limiting the first privilege awarded the other intervenors or opponents to the sugar & molasses seized or its proceeds, out of which only they are entitled to be first paid, and as thus amended the judgment is affirmed, appellees to pay costs of appeal.

A true copy.

[SEAL.] (S'g'd) GEO. W. DUPREE, *Clerk.*

EXHIBIT LEASE.

Annexed to bill of exceptions No. 3.

STATE OF LOUISIANA, *Parish and City of New Orleans:*

Be it known that on this nineteenth day of February, in the year of our Lord one thousand eight hundred and eighty-one, and
95 of the Independence of the United States of America the one hundred and fifth, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and of the witnesses hereinafter named and undersigned, personally came and appeared Jules Lapene, of this city, who declared that, for the consideration, on the terms and conditions, and under the covenants, agreements, and stipulations hereinafter expressed, he does by these presents let, lease, and hire unto Pierre B. Dragon, of the parish of Plaquemines, in this State, here

present accepting, for the full term and period of five years, to be completed from the first day of January, eighteen hundred and eighty-one, and terminating on the thirty-first day of December, eighteen hundred and eighty-five, all and singular that certain tract of land established as a sugar plantation, and known by the name of "Monsecours," well known to the lessee, of which he ac-
96 knowledges possession, situated in the parish of Plaquemines, in this State, at the place commonly called "Poverty Point," on the left bank of the Mississippi river, about thirty-five miles below the city of New Orleans, and measuring thirty-nine arpents and twenty-five toises front on said river by forty arpents in depth, all, more or less, bounded on the upper line by lands formally owned by Jaun Rivos, now to Burbridge and Miller, and on the lower side by the tract of land known as "Ste. Sophie," formerly belonging to the succession of A. B. Lesseps, together with all the buildings, improvements, and appurtenances, machinery, apparatus, wagons, farming utensils, implements of husbandry, thirty mules, to be taken from a larger number now on the place, two horses, now on the place, and, generally, every article whatsoever belonging or used in the workings of said plantation. This lease is made and accepted for and in consideration of an annual rental of four thousand eight hundred dollars, payable on the first day of October in each year, and without regard to any fire or destruction of any of the build-
97 ings on said plantation, or a crevasse and loss and damage therefrom, and whether or not said lessee should have undisturbed or full use of the herein-leased plantation.

And as evidence of the aforesaid annual installments said lessee has made and executed his five certain promissory notes for the sum of four thousand eight hundred each, drawn by him to the order of and endorsed by himself, with Anathase Dragon as surety, dated on the day and date hereof, and payable at the office of Bush and Levert, in this city, on the first day of October fixed, in each of the years eighteen hundred and eighty-one, eighteen hundred and eighty-two, eighteen hundred and eighty-three, eighteen hundred and eighty-four, and eighteen hundred and eighty-five, with interest thereon from and after maturity; if not then paid, at the rate of eight per cent. per annum until final payment; which said notes, after having been paraphed by me, said notary, for identification herewith, were
98 delivered unto the aforesaid lessor, who hereby acknowledges their receipt.

And it is distinctly understood and agreed to that the herein-leased plantation and appurtenances is now received in good order and condition, and that at the end of this lease the same is to be delivered and returned in like good order and condition unto the said lessor or his legal representative, with all things thereto belonging, and that such articles as may be missing shall be accounted for at their value in money, allowing for usual wear and tear.

That at the expiration of this lease the said lessee shall and will leave one hundred and fifty acres of first year's stubble, and also seed sufficient to plant, in the usual and ordinary manner, one hundred and fifty acres of plant cane, and should the plant cane exceed

one hundred and fifty acres, or prove less than that quantity, the difference up to the quantity of twenty acres and no more shall be paid for at the rate of fifteen dollars per acre.

99 That the said lessee assumes and takes upon himself all risks whatsoever as to his possession and occupancy of said plantation, and shall be liable for and pay the aforesaid rental or lease-money annually under all circumstances, whether a fire or crevasse or any other disaster occurs, or he, said lessee, should be deprived from any cause of the use of said property.

That, should the residence or the stable on said plantation burn down, said Lapéne shall and will erect and put up within a reasonable time such new buildings as his means will permit and the necessities of the place may require. The insurances of the improvements or buildings on said property are at the cost and charge of said lessor, and all benefits resulting therefrom are to enure solely to the benefit of said Lapene.

That, should the services of an attorney-at-law be incurred by said Lapene for any cause arising out of this contract, the said lessee shall and will pay the fees of such attorney, and the same,

100 however, are fixed at the rate of ten per cent.; so in suit.

That an inventory of the property and effects delivered to said lessee with said plantation is hereunto annexed for reference, and the same or their equivalent is to be returned in good order at the end of this lease, and that the horses are valued at seventy-five dollars each and the mules at one hundred and twenty-five dollars each, and are to be accounted for at said prices.

That a lessor's lien is expressly reserved and retained to guarantee the faithful performance of all the obligations and conditions hereunder imposed on said lessee.

Thus done and passed in my office, in New Orleans aforesaid, in the presence of John J. Ward and Paul A. Ory, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, on the day and date aforesaid.

(Original signed)

JULES LAPENE.
PIERRE B. DRAGON.
ANDREW HERO, JR.,
Not. Pub.

JNO. J. WARD.
P. A. ARY.

101 NEW ORLEANS, LA., *Feb.* 1, 1883.

B. Saloy is hereby admitted to be the lessor by subsequent purchase that he has effected of the within-described plantation.

(Original signed.)

PIERRE B. DRAGON.
JOHN J. WARD.

Witness:
ANDREW HERO, JR.

A true copy of the original act on file and of record in my office. New Orleans, Nov. 23d, 1883.

[SEAL.] ANDREW HERO, JR.,
Not. Pub.

Copy of Inventory Annexed to Lease.

1 draining-machine, wheel 31 feet, in good condition.
2 double quarters.
1 good kitchen for white labor.
1 overseer's house.
2-story building adjoining sugar-house—1st story brick, 2nd story wooden, used for mechanics, &c.; sugar-house, part brick & wood; a good cane shed.
Purgery covered with slates (part brick & wood); 1 large stable—stalls for 54 mules and ample room for feed; hay-loft above the stable. A good dwelling-house, containing 8 rooms and 2
102 closets—1st story brick and 2d wood; hall upstairs and down; 2 galleries; a good store and bakery.
Field, enclosed with a good fence.
65 acres, fall-plowed.
48 mules, in good order.
10 large cane carts.
4 small carts.
8 four-horse plows.
24 two-horse plows.
1 Wrest Dick cultivator.
40 hoes, more or less.
1 diamond fluke.
1 fluke for planting purposes.
4 axes.
1 carriage.
Sugar-house, in good order; steam train vacuum pan; 4 centrifugals.
Seed to plant 150 acres.
150 acres 1st-year stubble.
70 " 2d-year stubble.

STATE OF LOUISIANA, *Parish of Orleans:*

I, Andrew Hero, Jr., a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana
103 aforesaid, do certify the above and foregoing list of enumeration of articles is a true and correct copy of the original list or inventory annexed to and made part of an act of lease by Jules Lapene unto Pierre B. Dragon, executed before the undersigned notary on the nineteenth day of February, A. D. 1881.

As witness my hand and seal, at New Orleans, La., on this June 11th, A. D. 1885.

[SEAL.] ANDREW HERO, JR.,
Not. Pub.

Record of Suit No. 617, *Entitled B Saloy* vs. *P. B. and A. Dragon.*

$4,800 NEW ORLEANS, LA., 19*th February*, 1881.

On first of October, eighteen hundred & eighty-three, fixed after date, I promise to pay to the order of myself, at the office of Bush & Levert, in this city, four thousand eight hundred dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity; if not then paid, until final payment.

PIERRE B. DRAGON.

Ne varietur.
New Orleans, 19th February, 1881.

ANDREW HERO,
Not. Pub.

$4,800. NEW ORLEANS, LA., 19*th February*, 1881.

104 On first October, eighteen hundred & eighty-two, fixed after date, I promise to pay to the order of myself, at the office of Buch & Levert, in this city, four thousand eight hundred dollars, value received, with interest at the rate of eight per cent. per annum from and after maturity; if not then paid, until final payment.

PIERRE B. DRAGON.

Ne varietur.
New Orleans, 19th February, 1881.

ANDREW HERO,
Not. Pub.

To the Honorable Albert E. Livaudais, the judge of the twenty-fourth judicial district court in and for the parish of Plaquemines:

The petition of Bertrand Saloy, who resides in the city of New Orleans, respectfully shows that on the 19th day of February, 1881, by act passed before Andrew Hero, Jr., a notary public of the city of New Orleans, Jules Lapene did lease, let, and hire unto Pierre B. Dragon, who resides in the parish of Plaquemines, for the full term and period of five (5) years, to be computed from the 1st day of January, 1881, and terminating on the 1st day of December, 1885, "all & singular that certain tract of *of* land
105 established as a sugar plantation and known by the name of "Monsecours," well known to the lessee, of which he acknowledges possession, situated in the parish of Plaquemines, on the left bank of the Mississippi river, about thirty-five miles below the city of New Orleans, & measuring thirty-nine arpents & twenty-five toises front on said river by forty arpents in depth, all, more or less, bounded on the upper line by lands formerly owned by Jaun Rivos, now to Burbridge & Miller, & on the lower side by the tract of land known as "Ste. Sophie," formerly belonging to the succession of A. B. Lesseps, together with all the buildings and improvements & appurtenances, machinery, apparatus, wagons, farming utensils, implements of husbandry, thirty mules, two horses, & generally every article whatsoever belonging or used in the working of

plantation, said property being leased to said Pierre B. Dragon at an annual rental of $4,800.00, payable on the 1st of October of each
106 and every year, in evidence whereof the said Pierre B. Dragon, lessee, did make and execute his five certain promissory notes, each for the sum of four thousand eight hundred ($4,800.00) dollars, drawn by him to the order of and endorsed by himself, with Athanase Dragon as surety, dated on the day and date thereof, viz., New Orleans, La., 19th February, 1881, & payable at the office of Bush & Levert, in said city, on the 1st of October, fixed in each of the years 1881, 1882, 1883, 1884, and 1885, with interest thereon from and after maturity at the rate of 8 % per annum until final payment, which notes were duly paraphed by said notary to identify them with said act; all of which will more fully appear from a duly certified copy of said act of lease from Jules Lapene to P. H. Dragon, herewith filed as part hereof; that said notes are likewise endorsed by Athanase Dragon as surety; that in said act it is expressly stipulated that should the services of an attorney-at-law be incurred by said Lapene for
107 any cause arising out of said contract the said lessee should pay the fees of the attorney, which are therein fixed, at the rate of ten per cent. (10 %) of the amount sued for; that subsequently your petitioner, having became the purchaser and owner of said property, the following agreement was annexed to said lease:

"NEW ORLEANS, LA., *Feb.* 1, 1883.

"B. Saloy is hereby admitted to be the lessor by subsequent purchase that he has effected of the within-described plantation.

"(Signed) PIERRE B. DRAGON.

"Witness-:
"ANDREW HERO, JR.
"JNO. J. WARD."

That your petitioner is the true and lawful holder and owner of two (2) certain promissory notes, each for the sum of four thousand eight hundred dollars, both dated New Orleans, La., 19th February, 1881, and payable on the 1st October, 1882, & 1st October, 1883, fixed after date, at the office of Bush & Levert, drawn by Pierre B. Dragon to the order of and endorsed by himself, & also endorsed by Athanase Dragon as surety.

108 That one of said notes, to wit, the one due on the 1st of October, 1882, is subject to two credits, viz., (1) one for the sum of $2,125.02, paid on account Dec. 23, 1882, and (2) the other, the sum of $1,026.94, paid on account 10th November, 1883, leaving a a balance due with eight per — interest thereon; that said notes are paraphed "*ne varietur*" to identify them with said act above mentioned and are for the installments of rent of said plantation above described, due Oct. 1, 1882, & Oct. 1, 1883, respectively; all of which will more fully appear from said notest hemselves, herewith filed and made part of this petition; that for the payment of said notes your petitioner has the lessor's lien and privileges upon the movables situated on the "Monsecours" plantation belonging unto petitioner,

& verily fears that P. B. Dragon will remove the same out of said premises & that he may be thereby deprived of his lien.

Your petitioner furthers avers that on the 1st of Feb., 1883, by act under private signature, he did lease unto Pierre B.
109 Dragon & Bro., a firm composed of Pierre B. Dragon and Athanase Dragon, a certain tract of land known as the St. Sophie tract, having a front of ten arpents, more or less, and forty arpents deep, more or less, adjoining Monsecours plantation, in the parish of Plaquemines, for a term of three years, in consideration whereof the said Pierre B. Dragon & Brother did bind & obligate themselves to deliver to petitioner or his agent two hundred barrels (200 bbls.) of first quality of rough rice as an annual rental, to be delivered on the 1st day of October of each year during the continuance of said lease, as will more fully appear from said lease itself, herewith filed and made a part of this petition.

Now, your petitioner alleges and avers that said defendants have failed to pay the balance of the rent of "Monsecours'" plantation, evidenced by said note which matured October 1st, 1882; and they have also wholly failed to pay any part or portion of the rent
110 of "Monsecours" plantation, falling due Oct. 1, 1883; and also failed and neglected to deliver the two hundred barrels of rough rice, due and owing as aforesaid, for the rent of "St. Sophie" tract, notwithstanding amicable demand.

That said two hundred barrels of first quality of rough rice is worth the price and sum of four dollars per barrel, making eight hundred dollars.

Petitioner alleges amicable demand and failure to pay.

Wherefore petitioners prays that said Pierre B. Dragon and Athanase Dragon be severally cited to appear and answer this petition; that the annexed affidavit, considered a writ of provisional seizure, do issue herein, commanding the sheriff to provisionally seize and take into his possession all the movables found upon the premises and attached to the "Monsecours" plantation and "St. Sophie" tract of land, above mentioned and described; that after due proceedings the said Pierre B. Dragon and Athanase Dragon be condemned *in solido* to pay unto petitioner (1) the sum of
111 four thousand eight hundred dollars, less the sum of two thousand and twenty-five $\frac{2}{100}$ dollars, paid on account Dec. 23, 1882, and the further sum of one thousand and twenty-six $\frac{94}{100}$ dollars, paid on account Nov. 10th, 1883, with eight per cent. interest from maturity until paid; and, secondly, the sum of four thousand eight hundred dollars, with 8% interest from 1st Oct., 1883, until paid, and with ten per (10%) cent. for petitioner's attorney's fees upon said amounts, with lessor's lien and privilege upon all the movables found upon the premises and attached to the "Monsecours" plantation; and that said defendants be further condemned to deliver unto petitioner two hundred barrels of first quality of rough rice for rent of St. Sophie tract; or, in default thereof, to pay petitioner the further sum of eight hundred ($800) dollars in lieu thereof, with lessor's lien and privilege upon the movables found upon the premises and attached to said St. Sophie tract; that said property, herein

provisionally seized be sold to pay and satisfy petitioner's
112 claim, with costs, and for all general and equitable relief.

E. HOWARD McCALEB,
Attorney for Petitioner.

B. Saloy, being duly sworn, deposes and says that all the allegations in the foregoing petition contained are true; that P. B. Dragon and Athanase Dragon are justly and truly indebted to him, 1st, in the sum of four thousand eight hundred dollars, less the sum of $2,025.02, paid on account Dec. 23, 1882, and the further sum of $1,026.98 *dollars*, paid on account Nov. 10, 1883, being for rent of Monsecours plantation, due and payable Oct. 1, 1882; and, secondly, the sum of $4,800.00, rent of Monsecours plantation, due & payable Oct. 1, 1883; and, thirdly, two hundred barrels of first quality of rough rice, for rent of St. Sophie tract, due and payable Oct. 1st, 1883; that *affidavit* verily fears, and has good reason to believe, that said lessees will remove the property on which he has the lessor's
113 lien and privilege out of the premises and away from the Monsecours plantation and St. Sophie tract, and that he may be thereby deprived of his lien.

B. SALOY.

Sworn to and subscribed before me this 26th day of November, A. D. 1883.

T. WHARTON COLLENS,
Notary Public.

Order

Let a writ of provisional seizure issue as within prayed for and according to law.

Parish of Plaquemines, Nov. 27th, 1883.

A. E. LIVAUDAIS,
Judge 24th Jud'l Dist. La.

STATE OF LOUISIANA, *Parish of Orleans:*

To whom it may concern:

Be it known, on this first day of February, A. D. 1883, we, the parties undersigned, have entered into the following agreement and contract, to wit:

114 It is understood and agreed that I, Bertrand Saloy, do by these presents lease a certain tract of land known as St. Sophie tract, having a front of (10) ten arpents, more or less, and (40) arpents deep, more or less, adjoining Monsecours plantation, in the parish of Plaquemines, State of Louisiana, for a term of three years from the date of this contract.

It is further understood and agreed that whatever improvements or betterments that may be made upon the said St. Sophie plantation shall become, at the expiration of this lease, the exclusive property of the lessor without any compensation whatever.

We, Pierre B. Dragon & Bro., on the second part, do hereby bargain, agree, and stipulate and oblige *myself* to deliver in good order,

in compensation thereof, to Bertrand Saloy or his agent (200) two hundred barrels (of first quality) of rough rice, to be delivered on the first day of October of each year during the continuance of this lease.

In faith whereof the parties in interest have hereto signed
115 their names on this first day of Febr'y, A. D. 1883.

(Signed) PIERRE B. DRAGON & BRO.
" B. SALOY.

Witnesses:
GEO. D'AUTRAY.
CHAS. B. RAY.

STATE OF LOUISIANA, *Parish of Orleans:*

This memorandum is to certify that the within and foregoing contract of lease has my approval, and it is understood that the amounts received from same are to be placed to the credit of Jules Lapene, one of the undersigned, in liquidation of his indebtedness to Mr. Saloy or my two notes subscribed to said Saloy.

(Signed) JULES LAPENE.
" B. SALOY.

Witnesses present:
GEO. D'AUTRAY.
CHAS. B. RAY.

STATE OF LOUISIANA, *Parish and City of New Orleans:*

Be it known that on this nineteenth day of February, in the year of our Lord one thousand and eight hundred and
116 eighty-one, and of the Independence of the United States of America the one hundred and fifth, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and of the witnesses hereinafter named and undersigned, personally came and appeared Jules Lapene, of this city, who declared that for the consideration, on the terms and conditions, and under the covenants, agreements, and stipulations hereinafter expressed, he does by these presents let, lease, and hire unto Pierre B. Dragon, of the Parish of Plaquemines, in this State, here present accepting, for the full term and period of five years, to be computed from the first day of January, eighteen hundred and eighty-one and terminating on thirty-first day of December, eighteen hundred and eighty-five, all and singular that certain tract of land established as a sugar plantation and known by the name of "Monsecours," well
117 known by the lessee, of which he acknowledges possession, situated in the parish of Plaquemines, in this State, at the place commonly called "Poverty Point," on the left bank of the Mississippi river, about thirty-five miles below the city of New Orleans, and measuring thirty-nine arpents and twenty-five toises front on said river by forty arpents in depth, all or more or less, bounded on the upper line by lands formerly owned by Jaun Rivos, now to

Burbridge and Miller, and on the lower side by the tract of land known as "Ste. Sophie," formerly belonging to the succession of A. B. Lesseps, together with all the buildings, improvements, and appurtenances, machinery, apparatus, wagons, farming utensils, implements of husbandry, thirty mules, to be taken from a larger number on the place, two horses now on the place, and generally every article whatsoever belonging or used in the working of said plantation.

This lease is made and accepted for and in consideration of an annual rental of four thousand eight hundred dollars, payable on the first day of October in each year, and without regard to
118 any fire or destruction of any of the buildings on said plantation, or a crevasse, and loss and damage therefrom, and whether or not said lessee should have undisturbed or full use of the herein-leased plantation.

And, as evidence of the aforesaid annual installments, said lessee has made and executed his five certain promissory notes for the sum of four thousand eight hundred — each, drawn by him to the order of and endorsed by himself, with Athanase Dragon, as surety, dated on the *date* and date hereof, and payable at the office of Bush & Levert, in this city, on the first day of October fixed, in each of the years eighteen hundred and eighty-one, eighteen hundred and eighty-two, eighteen hundred and eighty-three, eighteen hundred and eighty-four, and eighteen hundred and eighty-five, with interest thereon from and after maturity; if not then paid, at the rate of eight per cent. per annum until final payment; which said notes, after having been paraphed by me, said notary, for identifi-
119 cation herewith, were delivered unto the aforesaid lessor, who hereby acknowledges their receipt.

And it is distinctly understood and agreed to that the herein-leased plantation and appurtenances is now received in good order and condition, and that at the end of this lease the same is to be delivered and returned in like good order and condition unto the said lessor or his legal representative, with all things thereto belonging, and that such articles as may be missing shall be accounted for at their value in money, allowing for usual wear and tear.

That at the expiration of this lease the said lessee shall and will lease one hundred and fifty acres of first year's stubble, and also seed sufficient to plant, in the usual and ordinary manner, one hundred and fifty acres of plant cane, and should the plant cane exceed one hundred and fifty acres, or prove less than that quan-ity, the difference, up to the quan-ity of twenty acres and no more, shall be paid for at the rate of fifteen dollars per acre.

That the said lessee assumes and takes upon himself all risks
120 whatsoever as to his possession and occupancy of said plantation, and shall be liable for and pay the aforesaid rental or lease money annually under all circumstances, whether a fire or crevasse or any other disaster occurs, or he, said lessee, should be deprived from any cause of the use of said property.

That should the residence or the stable on said plantation burn down said Lapene shall and will erect and put up, within a reason-

able time, such new buildings as his means will permit and the necessities of the place may require. The insurances of the improvements or buildings on said property are at the cost and charge of said lessor, and all benefits resulting therefrom are to enure solely to the benefit of said Lapene.

That, should the services of an attorney-at-law be incurred by said Lapene for any cause arising out of this contract, the said lessee shall and will pay the fees of such attorney, and the same, however, are fixed at the rate of ten per cent. so in suit.

121 That an inventory of the property and effects delivered to said lessee with said plantation is hereunto annexed for reference, and the same or their equivalent is to be returned in good order at the end of this lease, and that the horses are valued at seventy-five dollars each and the mules at one hundred and twenty-five dollars each, and are to be accounted for at said prices.

That a lessor's lien is expressly reserved and retained to guarantee the faithful performance of all the obligations and conditions hereunder imposed on said lessee.

Thus done and passed in my office, in New Orleans aforesaid, in the presence of John J. Ward and Paul A. Ory, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, on the day and date aforesaid.

(Original signed)

JULES LAPENE.
PIERRE B. DRAGON.
ANDREW HERO, JR.
Not. Pub.

JNO. J. WARD.
P. A. ORY.

NEW ORLEANS, LA., *Feb.* 1, 1883.

122 B. Saloy is hereby admitted to be the lessor by subsequent purchase that he has effected of the within-described plantation.

(Original signed) PIERRE B. DRAGON.
JOHN J. WARD.

Witness:
ANDREW HERO, JR.

A true copy of the original act on file and of record in my office.
New Orleans, Nov. 23, 1883.

ANDREW HERO,
Not. Pub.

STATE OF LOUISIANA, *Parish of Plaquemines:*

Twenty-Fourth Judicial District Court.

BERTRAND SALOY
vs.
PIERRE B. DRAGON & ATHANASE DRAGON. } 617.

To Messrs. Pierre B. Dragon & Athanase Dragon, parish of Plaquemines:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the 24th judicial district court in and for the parish of Plaquemines ten days after service hereof, adding one day for every ten-miles distance
123 from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge.

Parish of Plaquemines, November 28th, 1883.

D. A. THIBAUT, *Clerk.*

Copy of petition and citation inside, to be served on Messrs. Pierre B. Dragon and Athanase Dragon.

Received November 28th, 1883, and on the 1st of December of same year served true copies of the within citation, with accompanying certified copies of petition, on Messrs. P. B. Dragon and Athanase Dragon, both personally, at their domicils, in this parish.

Returned December 3d, 1883.

O. G. THIBAUT,
D'y Sheriff.

Filed December 3rd, 1883.

D. A. THIBAUT.

To the Honorable A. E. Livaudais, judge of the 24th judicial district court, sitting in and for the parish of Plaquemines:

124 The petition of intervention, 3d opposition, of Joseph Loga, who resides in this parish, with respect represents:

That Pierre B. Dragon and Athanase Dragon, of this parish, composing the firm of P. B. Dragon & Bros., lessees of the "Monsecours" plantation, situated in this parish, are justly and truly indebted unto him in the full sum of ninety-eight dollars, with legal interest from judicial demand until paid, for this, viz:

That said P. B. Dragon & Bros. employed your petitioner as a labourer to work on said plantation to assist and aid them in cultivating crops of cane and rice made on said "Monsecours" plantation during this year 1883; that the total amount due by them to your petitioner is ninety-eight dollars, as will more fully appear by the bill duly approved by them, hereto annexed for reference and made part hereof; that, although amicably requested, the said P. B. Dragon & Bros. have neglected and still neglect to satisfy petitioner's claim.

Now, petitioner avers that at the instance of one Bertrand
125 Saloy, of the city of New Orleans, a writ of provisional seizure was issued by this honorable court, in the suit of Bertrand Saloy *vs.* Pierre B. Dragon & Bros., No. —, of the docket of this court, and that in pursuance thereof C. V. Thibaut, Esq., sheriff of this parish, has seized and taken into his possession and control the sugar, molasses, and rice made and cultivated this year, 1883, by said P. B. Dragon and Bros., on said "Monsecours" plantation, upon which your petitioner has the laborer'- lien and privileges, which — of a higher class than that of said Bertrand Saloy's claim.

Wherefore petitioner prays that this his petition of intervention, third opposition, be filed; that copy of the same be served on said Bertrand Saloy, of the city and parish of Orleans; that he be cited to appear and answer thereto; that, after due and legal proceedings had, petitioner do have and receive of said Pierre B. Dragon & Athanase Dragon, composing the firm of P. B. Dragon & Bros., said sum of ninety-eight dollars, with legal interest from judicial demand until paid, with laborer's lien and privilege on the
126 sugar, molasses, rice, and other moveables, seized as aforesaid, and that out of the proceeds of sale of the same his claim be paid in preference to that of said Bertrand Saloy, and for costs.

Petitioner prays for all just and equitable relief in the premises, and as in duty bound.

A. LARTIGUE, *Att'y.*

Armand Lartigue, att'y for intervener, being duly sworn, says that the Honorable A. E. Livaudais, judge of the 24th judicial district, is absent from this parish.

A. LARTIGUE.

Sworn to and subscribed before me this 18th day of December, 1883.

D. A. THIBAUT.

Let this petition of intervention and third opposition be filed as prayed for and according to law.

Parish of Plaquemines, December 18th, 1883.

D. H. THIBAUT.

MONSECOURS, 12 *d'b'r*, 1883.

127 Montan total due a Jaun Lauga pour 1.00 ouvrage fai sur l'abetation Monsecours la somme de $98.00. Quatrevingt dix-huit piastr-s.

Approurai:

PIERRE B. DRAGON & BRO.

This bill is correct and is still due to Joseph Loga.

PIERRE B. DRAGON & BRO.

STATE OF LOUISIANA, *Parish of Orleans:*

Twenty-fourth Judicial District Court.

BERTRAND SALOY
vs.
P. B. DRAGON & BRO. } 617.

To Mr. Bertrand Saloy, parish of Orleans:

You are hereby summoned to comply with the demand contained in the petition of intervention and 3rd opposition of Joseph Loga, of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the twenty-fourth judicial district court in and for the parish of Plaquemines ten days after service hereof, adding one day for every ten-miles distance from your residence to the court-house of this parish.

128 By order of the court.

Witness the Honorable A. E. Lisaudais, judge.

Parish of Placquemines, December 26th, 1883.

D. A. THIBAUT, *Clerk.*

Copy of petition of intervention and 3rd opposition of Joseph Loga and citation inside to be served on Mr. Bertrand Saloy.

Rec'd Dec. 28th, 1883, and on the same day, month, and year I issued a copy of the within citation and accompanying petition of intervention and 3rd opposition personally on Bertrand Saloy, plaintiff herein.

Rec'd same day.

P. A. McINTYRE,
D'y Sheriff, Parish of Orleans.

Sheriff's fees, $1.50.

No. 617. Fol. 258, C. D. ——, attorney.

24th District Court for the Parish of Placquemines.

B. SALOY *vs.* P. B. DRAGON & BROS.

I hereby certify that the sheriff's deposit in this case amount- to four $\frac{50}{100}$ dollars, $4.50.

New Orleans, Dec. 29th, 1883.

A. W. CONNELL, JR.,
Deputy Sheriff.

N. O., 29th Dec., 1883.

A. W. CONNELL, JR.,
D'y Sheriff.

129 STATE OF LOUISIANA, *Parish of Plaquemines:*

Twenty-fourth Judicial District Court.

BERTRAND SALOY *vs.* PIERRE B. DRAGON & ATHANESE DRAGON.

The State of Louisiana to the sheriff of the parish of Plaquemines, Greeting.

You are hereby commanded, in the name of the State of Louisiana and of the twenty-fourth judicial district court in and for the parish of Plaquemines, to provisionally seize and take into your possession all the moveables found upon the premises and attached to the "Monsecours" plantation and St. Sophie tract of land, and to keep the same until otherwise directed by due course of law, and how you shall have executed this writ you make due return to our said court as the law directs.

Witness the Honorable A. E. Livaudais, judge of the court aforesaid, this 28th day of November, A. D. 1883.

130 D. A. THIBAUT, *Clerk.*

Received November 28th, 1883, and on the 1st day of December, 1883, proceeded to execute the within writ by seizing the property described in the annexed notice of seizure and appointed Wm. Hamilton sheriff's keeper; and on January 4th, 1884, a bond of release having been giv*ing* according to law, the same was released and the bond transferred to the defendants.

Returned January 4th, 1884.

R. BARRY,
Deputy Sheriff.

STATE OF LOUISIANA, *Parish of Plaquemines:*

In the 24th Jud'l District Court in and for the Parish of Plaquemines.

B. SALOY
vs.
P. B. DRAGON & ATHANASE DRAGON. } No. 617.

SHERIFF'S OFFICE,
POINTE À LA HACHE, *December 1st*, 1883.

To Messrs. P. B. Dragon & Athanase Dragon:

Please to take notice that by virtue of a writ of provisional
131 seizure issued in the above-mentioned suit I have seized and taken into my possession five (5) coolers of sugar, 2 lots of clarified sugar, said to contain about thirty-eight (38) barrels of sugar; one (1) steam-engine of 10-horse power, one (1) steam-engine of 4-horse power, one (1) rice thresher, one (1) rice straw press, one water elevator on Monsecour, two (2) one-horse cart-, one (1) ox cart, five (5) horses, three (3) oxen, one (1) bull, one lot of cows & calves in the prairie on Monsecour plantation, about (13) heads; one lot of coal on the levee.

O. G. THIBAUT,
D'y Sheriff.

To the Honorable A. E. Livaudais, judge of the 24th judicial district court, sitting in and for the parish of Plaquemines:

The petition of intervention and third opposition of James Morris, Francois Corbon, J. B. Dragon, David Dragon, Jourdan Ragas, Clement Ragas, Louis Dragon, Samuel Parker, M. Forey, and Jean Maigre, all residents of this parish, respectfully represent that
132 Pierre B. Dragon and Athanase Dragon, composing the firm of P. B. Dragon and Brothers, the lessees of the Monsecour plantation, situated in this parish, are justly and truly indebted unto them in the sum of five hundred and thirty-three $\frac{13}{100}$ dollars, with legal interest from judicial demand until paid, for this, to wit:

That as day laborers they were employed by said Pierre B. Dragon & Bros. to work on said Monsecours plantation, and for account of said lessees in assisting and aiding them to make and take off the cane and rice crops made on said plantation during the year 1883; that the respective days worked by each of your petitioners and the respective amounts due to each of them are set forth in the detailed bill accompanying this petition.

That their respective claims are as follows:

To James Morris, for days' work in August, September, October, November, & December	$41 93
Carried over	41 93
To Francois Corbon, for days' work in August, September, October, November, & December	115 43¼
To J. B. Dragon, for days' work in August, September, October, November, & December	56 93
133 To David Dragon, for days' work in Aug., Sept, Oct., & November	38 75
To Jourdan Ragas, for days' work in Aug., Nov., & December	52 68
To Clement Ragas, for days' work in November & December	38 18
To Sam. Parker, for days' work in Sept., Oct., & November	61 48
To M. Forey, for days' work in Oct., Nov., & December	44 00
To Jean Maigre, for days' work in October & November	38 25
Total amount	$530 13¼

As will more fully appear by the detail bill hereto annexed for reference and made part hereof.

That your petitioners' respective claims, as above described, are really and justly due to them, as will more fully appear by the bill hereto annexed, duly approved, recognized, and signed by said P. B. Dragon & Bros.

Petitioners further aver that as laborers they have a lien and privilege on the crops cultivated as aforesaid on said plantation and on the moveables therein in preference of any other
134 creditors of said Pierre B. Dragon & Bros.

Now, petitioners aver that in pursuance of a writ of provisional

seizure issued at the instance of Bertrand Saloy, of the city of New Orleans, in the suit of Bertrand Saloy *vs.* P. B. Dragon and Athanase Dragon, No. 617 of the docket of this court, and by virtue of and in obedience to a writ of sequestration issued in the suit of J. B. West & Co. *vs.* P. B. Dragon and Nathaniel Dragon, No. — of the docket of this court, C. V. Thibaut, Esq., sheriff of this parish, has seized and taken into his possession all the rice, sugar, & molasses made and to be made on said plantation to pay and satisfy said plaintiff's claims against P. B. Dragon & Bros., as will more fully appear by said writs, hereto annexed for reference and made part hereof.

That your petitioners' claims are to be paid before and in preference of said plaintiffs or of any other creditors of said P. B. Dragon & Bros.

Wherefore petitioners pray that this petition of interven-
135 tion and third opposition be filed; that copies of this petition be served on the defendants and on said B. Saloy and on I. B. West & Co.; that they be cited in the same manner to appear and answer thereto.

That after due and legal proceedings had petitioners do have and recover from Pierre B. Dragon & Brothers said sum of five hundred and thirty-three.13¼ dollars, with legal interest from judicial demand until paid, with laborers' lien and privilege, on the rice, sugar, molasses, and other moveables seized as aforesaid.

Petitioner pray, &c.

A. LARTIGUE, *Att'y.*

Let, as in the within petition prayed for, this petition of intervention and third opposition be filed.

Parish of Plaquemines, December 12th, 1883.

A. E. LIVAUDAIS,
Judge 24th Jud'l Dist., La.

P. B. Dragon & Brothers, Lessees of the Monsecour Plantation and Monsecours Plantation.

136 To James Morris, for—

1883.						
Aug.	For seven days,	*c.*	1.25 per day	----------	8	75
Sept.	" 14¼	"	" 1.25	----------	18	43¼
Oct.	" 8¼	"	" 1.20	----------	8	50
Nov.	" 4	"	" 1.25	----------	5	00
Dec.	" 1	"	" 1.25	----------	1	25
	Total			----------	$41	93¼

1883. To Francois Carbon.

Aug.	11 days' work, 1.25		13 75
Sept.	21¼ " " 1.25		34 68
Oct.	19½ " " 1.25		19 50
Nov.	21¾ " " 2.00		43 50
Dec.	2 " " 2.00		4 00
			115 43

1883. To J. B. Dragon.

Aug.	11 days' work, *c.* 1.00	11 00
Sept.	23½ " " " 1.00	23 50
Oct.	1 " " " 1.00	1 00
Nov.	13¼ " " " 1.25	17 18
"	4 watches (nights), .75	3 00
Dec.	1 day, *c.* 1.25	1 25
	Total	56 93

To David Dragon.

Aug.	8¾ days, *c.* .50	4 37½
Sept.	9¾ " *c.* .50	*1* 87½
Oct.	9¼ " *c.* .50	4 62½
Nov.	16¼ " *c.* 1.25	20 37½
Nov.	6 watched, night, .75	4 50
	Total	$38 75

137 To Jourdan Ragas.

1883.

Oct.	2 days' work, 1.25	2 50
Nov.	22¾ " " 1.25	28 43
Nov.	14 night-, watched, .75	10 50
Dec.	1 day's work, 1.25	1 25
	Total	$52 68

1883. To Clement Ragas.

Nov.	20¾ days' work, 1.25	25 93
Nov.	13 nights, watched, .75	9 75
Dec.	2 days, 1.25	2 50
		$38 18

1883. To Sam. Parker.

Sept.	30 days' work, 50c.	15 00
Oct.	31 " " 50	15 50
Nov.	30 " " 50	15 00
		$45 50

1883. To Louis Dragon.

Aout.	10 days' work, 1.00	10 00
Sept.	12¾ " " 1.00	12 75
Oct.	13¼ " " 1.00	13 25
Nov.	15¼ " " 1.25	19 68
	7½ night-, watched, .75	5 80
		$61 48

1883. To M. Forey.

Oct.	7 days' work, 1.25	8 75
Nov.	22¼ " " 1.25	27 37½
Nov.	8 nights, watched, .75	6 00
Dec.	1½ days' work, 1.25	1 87½
		$44 00

138 To Jean Maigre.

1883.

Oct.	4¼ days' work, 1.00	4 00
Nov.	27 " " 1.25	30 75
	2 night-, watched, .75	1 50
	Total	$36 25

Recapitulation.

To James Morris	41 93¼
" Francois Carbon	115 43
" J. B. Dragon	56 93
" David Dragon	38 75
" Jourdan Ragas	52 68
" Clement Ragas	38 18
" Sam. Parker	45 50
" Louis Dragon	61 48
" Forey	44 00
" Jean Maigre	38 25
Total	$533 73¼

Monsecour Pairole due tamp due Jhems Morice.

Aout.	7 journe, @	1 25	
Sept.	14¼ " "	1 25	
Oct.	8½ " "	1 00	
Nbre.	4 " "	1 25	
Dbre.	1 " "	1 25	
			$42 00

139 Francois Carbon.

Aout.	11	journe,	@	1 25	
Sept.	21¾	"	"	1 25	
Oct.	19½	"	"	1 00	
Nbr.	21¾	"	"	2 00	
Dbr.	2	"	"	----	
					93 75

Jhems B. Dragon.

Aout.	11	journe,	@	1 00	
Sept.	23½	"	"	1 00	
Oct.	1	"	"	1 00	
Nbre.	13¼	"	"	1 25	
Dbre.	1	"	"	1 25	
Nbre.	4	car.	"	75	
					80 25

David Dragon.

Aout.	8¾	journe		50	
Sept.	9¾	"		50	
Oct.	9¼	"		50	
Nbre.	16¼	"		1 25	
Nbre.	6	car.		75	
					59 50

Jourdan Ragas.

Oct.	2	journe,	@	1 25	
Nbre.	22¾	"	"	1 25	
Dbre.	1	"	"	1 25	
Nbre.	14	car.	"	75	
					49 75
					$325 25

140 Clement Ragas.

Nbre.	20¾	journe,	@	1 25	
Dbre.	2	"	"	1 25	
Nbre.	13	car.	"	75	
					$44 00

Sam. Parker.

Sept.	30	journe,	@	50	
Oct.	21	"	"	50	
Nbre.	30	"	"	50	
					30 50

Louis Dragon.

Aout.	10	journe,	@	1 00	
Sept.	12¾	"	"	1 00	
Oct.	13¼	"	"	1 00	
Nbre.	15¼	"	"	1 25	
Nbre.	7½	car.	"	75	
					44 50

Fauri.

Oct.	7 journe, @	1 25		
Nbre.	22¼ " "	1 25		
Dbre.	1½ " "	1 25		
Nbre.	8 car. "	75		
				44 50

Jean Maigre.

Oct.	4¼ journe, @	1 00		
Nbre.	27 " "	1 25		
	2 car. "	75		
				40 50
				$528 55

Approvai ce jour.

141 Monsecour, 11 Dbre., 1883.

PIERRE B. DRAGON & BRO.

24th Jud. District Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. & H. DRAGON, of J. MORRIS &c.

The defendants, in *propa*, now comes into court, admits all the facts and allegations in intervenor's petition contained to be true and correct, and confess judgment for the amount claimed therein—say, five hundred and thirty-three 13¼-100 dollars.

PIERIE B. DRAGON & BRO.

B. SALOY *vs.* P. B. DRAGON and ATHANASE DRAGON.

To the Honorable Albert E. Livaudais, judge of the twenty-fourth judicial district court in and for the parish of Plaquemines:

The petition of Bertrand Saloy, plaintiff in the above-entitled suit, respectfully shows that defendant- have failed to bond the property herein provisionally seized within the delay prescribed by law.

142 That under the provisions of act No. 19, approved Feb'y 26th, 1877, it is provided that when "the defendant has failed to bond after the expiration of ten days from said seizure it shall be lawful for the plaintiff, his agent or attorney-in-fact, to give similar bond and security to the sheriff as that required by law from the defendant, and to take the property provisionally seized into his possession;" that your petitioner, plaintiff in the above suit, desires to avail himself of the privilege conferred by said act.

Wherefore he prays that he be permitted to bond the property herein provisionally seized, and to take the same into his possession on executing his obligation, with good and solvent security, for whatever amount your honor may determine as being equal to the value of the property to be left in his possession, the condition of said bond to be that he will satisfy such judgment as may be rendered against him, or return the property, and for general relief.

E. HOWARD McCALEB,
Attorney for Petitioner.

Order.

143 Let the writ of provisional seizure herein issued be set aside, and the property seized be delivered to plaintiff, B. Saloy, on his executing bond, with good and solvent security, for the sum of five thousand dollars, conditioned as the law directs, as prayed for, and according to law.

A. E. LIVAUDAIS,
Judge 24th Jud'l Dist., La.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY
vs.
P. B. DRAGON, ATHANASE DRAGON. } 617.

JANUARY 4, 1884.

Received from Wm. Hamilton, sheriff's keeper, the following moveables, seized in the above-entitled suit, as follows, to wit: One (1) steam-engine of ten (10) horse power, one (1) steam-engine of four and a half (4½) horse power, one (1) rice thresher, one (1) straw press, one (1) water elevator, two (2) one-horse cart-, one (1) ox-cart, five (5) horses, three (3) oxen, one (1) bull, one lot of cows and calves, about thirteen heads; one lot of coal on the levee.

BERTRAND SALOY,
Per JULES LAPENE.

144 *Bond.*

Know all men that we, Bertrand Saloy and Henry P. Kernochan as surety, are held under Chas. V. Thibaut, sheriff of the parish of Plaquemines, in the State of Louisiana, in the penal sum of five thousand dollars; for the payment whereof to the said sheriff, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, respectively, by these presents, as witness our respective names hereunto affixed, at parish of Plaquemines, this 4th day of January, in the year one thousand eight hundred and eighty-four (1884).

Whereas in and by virtue of a writ of provisional seizure issued out of the honorable 24th jud. district court for the parish of Plaquemines, at the suit of B. Saloy *vs.* Pierre B. Dragon and Athanase Dragon, and numbered 617 on the docket of the said court, and which suit is now pending therein, the following described property, to wit, one hundred and twenty-eight (128) barrels of sugar, twenty-five (25) barrels of molasses, one (1) steam-engine of 10-horse
145 power, one (1) steam-engine of 4½-horse power, one (1) rice thresher, one (1) straw press, one (1) water elevator, two (2) one-horse cart-, one (1) ox-cart, five (5) horses, three (3) oxen, one (1) bull, one lot cows and calves, about 13 heads; one lot of coal, and about twenty-five (25) barrals of molasses in the sugar-house, has been seized, taken into the custody of the said sheriff, and detained according to law, but the same has been claimed by Bertrand Saloy,

plaintiff in said suit, and has been released and delivered to him upon his appearance in the said suit and delivering to the said sheriff, Chas. V. Thibaut, the present obligation, the condition of which is such that if the said plaintiff shall produce the property to meet the judgment of the court, or satisfy such judgment as may be rendered, then this obligation to be void, or else to remain in full force, virtue, and effect.

B. SALOY.
HENRY P. KERNOCHAN.

Signed and delivered in presence of—
E. HOWARD McCALEB.

146 *Affidavit.*

STATE OF LOUISIANA, *Parish of Plaquemines:*

CLERK'S OFFICE, 24TH JUD'L DISTRICT COURT.

I, —— ——, do solemnly swear that I reside in the parish of Plaquemines; that I have property in my own right, unincumbered and of sufficient value to satisfy amount of within bond, and that after the payment of all my debts and liabilities I am worth over and above the said amount, and that I am not tutor of minor children; that there exists no legal impediment to my signing said bond, and that I have not signed any obligation which may vitiate the validity of this bond.

Sworn to and subscribed before me this — day of ——, 188–.

——— ———.

Clerk District Court, Parish of Plaquemines.

Transfer.

STATE OF LOUISIANA, *Parish of Plaquemines:*

JANUARY 4TH, 1884.

I do hereby transfer, assign, and set over to defendants herein all my right, title, and interest in and to the within bond.

C. V. THIBAUT, *Sheriff.*

147 STATE OF LOUISIANA, *Parish of Plaquemines:*

Twenty-fourth Judicial District Court.

BERTRAND SALOY
vs.
P. B. DRAGON & BRO. } 617.

To Mr. Bertrand Saloy, parish of Orleans:

You are hereby summoned to comply with the demand contained in the petition of intervention & 3rd opposition of James Morris, of which a copy accompanies this citation, or deliver your answer to the same, in the clerk's office of the twenty-fourth judicial court in and for the parish of Plaquemines ten days after service hereof,

adding one day for every ten-miles distance from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge.

Parish of Plaquemines, December 26th, 1883.

D. A. THIBAUT, *Clerk.*

Copy of petition of intervention and 3rd opposition of Jas. Morris and citation inside to be served on Mr. Bertrand Saloy. Rec'd Dec. 28th, 1883, and on the same day, month, and year I served a
148 copy of the within citation and accompanying petition of intervention and 3rd opposition personally on Bertrand Saloy, plaintiff herein.

P. A. McINTYRE,
D'y Sheriff, Parish of Orleans.

Sheriff's fees, $1.50—rec'd same day.

STATE OF LOUISIANA, *Parish of Plaquemines:*

Twenty-fourth Judicial District Court.

BERTRAND SALOY
vs.
P. B. DRAGON & BRO. } 617.

To B. J. West & Co., parish of Orleans:

You are hereby summoned to comply with the demand contained in the petition of intervention and 3rd opposition of James Morris, of which a copy accompanies this citation, or deliver your answer to the same in the clerk's office of the twenty-fourth judicial district court in and for the parish of Plaquemines, ten days after service hereof, adding one day for every ten-miles distance from your residence to the court-house of this parish.

By order of the court.

Witness the Honorable A. E. Livaudais, judge.

Parish of Plaquemines, December 26th, 1883.

D. A. THIBAUT, *Clerk.*

149 Copy of intervention and 3rd opposition of Jas. Morris, petition and citation inside, to be served on Mr. ——, Messrs. B. J. West &Co.

Rec'd Dec. 28th, 1883, and on the 28th day of December, 1883, I served a copy of the within citation and accompanying petition of intervention, 3rd opposition of Jas. Morris, on B. J. West & Co., herein named, through W. J. West, a member of said firm, in person.

—— ——.

Sheriff's fees, $1.50.

$67.00. MONSECOURS, *N'bre 29th*, 1883.

At sight, pay to the order of G. H. Crowther sixty-seven $\frac{00}{100}$ dollars for Monsecour p'tion account, value received, and charge to account of—

PIERRE B. DRAGON & BRO.

To Simon Block, 43 Union St., New Orleans, La.

24th Judicial Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson, attorney for George H.
150 Crowther, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecours pl't'n, consisting of sugar, molasses, and rice, now on said place, and all of the moveable property which serves to the working of said plantation; and on further suggesting to the court that your mover is the purchaser and transferee of certain claims for labor done and performed on said crop and plantation with the laborers' privileges bearing on said crop as accessory to said rights, and on showing to the court that upon presentation of said claims to Mr. Pierre B. Dragon & Bro. they acknowledged said indebtedness and gave a draft in payment thereof on Mr. S. Block, of N. O., for the sum of sixty-seven dollars, the amount of said claims, which drafts Mr. S. Block refuses to pay, and which is annexed to and forms part of this motion; and on further suggesting to the court that by virtue of the privileged claims duly transferred to mover and acknowledgment thereof for the above amount that mover is entitled
151 to have his said privilege securing said claims recognized on the product of the crop now under seizure or the proceeds thereof as the first lien and privilege thereon and as superior to the landlord's privilege asserted by Mr. B. Saloy, wherefore it is ordered by this hon. court that this motion of George W. Crowther in third opposition be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment *versus* P. B. Dragon & Bro. for the sum of sixty-seven $\frac{00}{100}$ dollars, with costs; that the sheriff retain out of the proceeds of the property seized in this cause a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause on the 1st Monday of March, 1884, why mover's claim should not be paid in preference to all others out of the proceeds of the property provisionally seized in the present cause.

Parish of Plaquemines, Dec. 31st, 1883.

A. E. LIVAUDAIS, *Judge.*

152 STATE OF LOUISIANA, *Parish of Plaquemines:*

Twenty-fourth Judicial District Court.

I, the undersigned clerk, do hereby certify that the following entries were made in the minutes of the 24th jud'l dist. court in and for the parish of Plaquemines in the following entitled and numbered case, to wit:

B. J. WEST & SON
vs.
P. B. DRAGON & BRO. } No. 597.

Intervention and 3rd opposition of B. Saloy as follows, to wit:

TUESDAY, *Dec. 4th*, 1884.

On motion of James Wilkinson, Esq., of counsel for plaintiff-, and on suggesting to the court that although duly cited the defendants have failed to answer within the time prescribed by law, it is ordered that judgment by default be entered against said defendants.

TUESDAY, *Dec. 11th*, 1883.

On motion of James Wilkinson, Esq., of counsel for plaintiffs, and on adducing due proof of said plaintiffs' demand, and considering the law and the evidence to be in favor of said plaintiffs and against the defendants, it is, therefore, ordered, adjudged, and decreed that the judgment by default herein entered on the 4th of December, 1883, be now confirmed and made final and that said plain-
153 tiffs, Wm. J. West, Nettie A. West, Edgar M. West, Ben. J. West, Mrs. Anna Y. West, in her own right and as trutrix of her minor children, Lily West, Lawrence S. West, Louis B. West, and Harold F. West, forming the commercial firm of B. J. West & Son, do have and recover of the defendants, Pierre B. Dragon and Athanase Dragon, jointly and *in solido*, the sum of four hundred and eighty-seven $\frac{03}{100}$ dollars, with legal interest thereon from judicial demand until paid, and costs of suit, with privilege on the property herein sequestered, without prejudice to the rights of B. Saloy and Joseph David, intervenors and third opponents herein.

TUESDAY, *Dec. 11th*, 1883.

By consent of counsel this case was this day regularly called for trial on the intervention and 3rd opposition of B. Saloy.

Present: E. H. McCaleb, Esq., of counsel for intervener and 3rd opponent; James Wilkinson, Esq., of counsel for pl'ffs; defendants absent and unrepresented.

It is understood by counsel in open court that the privilege asserted by B. Saloy herein shall be considered, and is taken up and tried as a third opposition by consent of parties; and, after
154 hearing the evidence and arguments of counsel, said intervention and 3rd opposition being submitted, the court took the same under advisement.

MONDAY, *March 3rd*, 1884.

In this case heretofore tried and submitted, the court this day rendered the following judgment:

For the reasons assigned in the written opinion of the court this day delivered and filed, and considering the law and the evidence to be in favor of plaintiffs, B. J. West & Son, and against B. Saloy, 3rd opponent, it is ordered, adjudged, and decreed that said 3rd opposition be dismissed with costs.

THURSDAY, *March 6th*, 1884.

On motion of E. Howard McCaleb, Esq., att'y for Bertrand Saloy, 3rd opponent herein, and on suggesting to the court that he is advised and believes that there is error to his prejudice in the final judgment herein rendered on his opposition in favor of plaintiffs and against said opponent, and that he desires to have said error corrected by appeal:

It is ordered that a suspensive appeal be granted to said B. Saloy from said judgment, returnable to the court of appeals for the fifth circuit, holding sessions in the parish of Plaquemines, on the
155 first day of the next term thereof, on said Saloy executing a bond conditioned as the law directs, with good and solvent surety, in the sum of one hundred dollars ($100).

In faith whereof I hereunto sign my name officially, at the clerk's office, in the parish of Plaquemines, and affix the seal of the court aforesaid this 2nd day of April, A. D. 1884.

D. A. THIBAUT.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON.

On motion of James Wilkinson and Rob't Hingle, att'ys for Geo. H. Hardeman, of this parish, and on suggesting to the court that in the above-entitled cause the plaintiff, B. Saloy, has caused a writ of provisional seizure to issue and seize all the moveable property belonging to defendants on the Monsecour pl't'n, in this parish, including all of the crop of 1883 and product thereof on the said pl't'n, to wit, a large quantity of sugar, molasses, rice, and other moveable property used in the cultivation and production of the crop on the said place, as well as all the other moveable property situated on the said place, as will be more fully shown by the return on the
156 notice of seizure served by the sheriff on the defendants herein; and upon showing to the court that mover, Geo. W Hardeman, was employed to take off the said crop by Messrs. P. B. Dragon & Bro. on the Monsecour pl't'n for and in consideration of the sum of two hundred and fifty $\frac{0}{100}$ dollars.

That, in accordance with the terms of said contract, he has, during the past three months, labored in said sugar-house and on said pl't'n in grinding and repairing the machinery of the sugar-house, and in other manifold labors and duties under said contract; that when the sheriff seized said place the term of his labors were nearly com-

pleted, and that the full amount of two hundred and thirty $\frac{00}{100}$ dollars was due to mover for said labor and services by the said defendants; that mover has a first privilege under art. 3217 of the civil code not only on the product of the present crop in the sheriff's possession, but also on everything which serves to the working of the Monsecour pl't'n, for the wages of his labor now due to him as aforesaid, and that this privilege is superior to that of the plaintiff in the within cause:

Wherefore it is ordered by this hon. court that this motion of third opposition be filed; that copies of same be served on B.
157 Saloy and the sheriff of this parish; that after due and legal proceedings that mover recover judgment against defendants, P. B. Dragon & Bro., for one hundred and thirty $\frac{00}{100}$ dollars, with costs; decreeing also that he have a first lien and privilege on the property herein seized or the proceeds thereof, and after the sale thereof that the sheriff do retain in his hands in this cause a sum sufficient to pay mover's claim, with interest and costs, until a final determination in this cause of mover's rights.

Let this motion of third opposition be filed; let copies hereof be served on B. Saloy and C. V. Thibaut, sheriff; let the sheriff retain in his hands in this cause a sum sufficient to pay mover's claim, with interest and costs, and let B. Saloy and C. V. Thibaut, sheriff, show cause, on the — day of ——, 1883, why the within rule should not be made absolute.

Accounts of the Various Laborers on the Monsecour Pl't'n Employed by Messrs. P. B. Dragon & Bro. in Harvesting the Crop of Sugar and Cane on that Place in Nov. & Dec., 1883.

158	Due Gustave Smith, 2½ days @ 1.60, $4.00; 1 watch, 75 cts.; 3½ days, $1.75, $6.12½	10	97½
	Garrison Croff, 5 d'ys, $2.00, $10; 1 watch, 75 cts.	10	75
	For wages due his wife, Violet Croff, 5 d'ys, @ 1.25, $6.25; 1 watch, 60	6	85
	Julian Howard, 2½ days, $1.60, $4.00; 3½ d'ys, 1.75, $6.12½; 1 watch, 75	10	97½
	For wages due his wife, 5 d'ys, $1.25, $6.25; 1 watch, 30	6	55
	Scott Griffin, 6 d'ys, @ $1.60, $9.60; 1 watch, 75	10	35
	For wages due his wife, Celia Griffin, 5 d'ys, 1.25	6	25
	For wages due his —, Stephen Griffin, 3 d'ys, @ 75, 2.25; 1 watch, 50	2	75
	Harris Brown, 6 d'ys, $1.60, $9.60; 2 watches, 75 cts.	11	10
	Dick Thomas, 6 d'ys, 1.60, $9.60; ½ watch, 35	9	95
	For Joe Thomas, his son, 3 d'ys, @ 60 cts.; 1 watch, 50	2	30
	Peter Ham, 3 d'ys, $1.60, $4.80; 3 d'ys, $1.75, $5.75; 1 watch, 75c.	10	60
	Rebecca Ham, 5 d'ys, @ 1.25	6	25
	James Berl, 2 d'ys, 60 cts.	1	20
	Sallie Taylor, 5 d'ys, $1.25	6	25
	Peggy Tocha, 5 d'ys, $1.25; ½ watch, 30	6	55
	Joseph Thomas, Sr., 3 days, 1.60; 2 days, 1.75	8	30
	Am't carried over	$128	15

159	Am't brought over	128 15
	Due Alfred McMiller, 5 d'ys, 1.25; 1 watch, 60	6 85
	Due Cornelius Thomas, 5 " 1.60; 1 d'y, 1.75	9 75
	" " " agent for Cornelius Brock, 3 d'ys, at 60; 1 watch, 50	2 30
	" " " agent for James Handy, 1 watch	75
	P. Hill, for am't due his minor sons, Samson Hill, 3 d'ys, 75c.; 3 d'ys, 60; 1 watch, 50	4 55
	Will Parker, 6 d'ys, 1.60; 1 watch, 75	10 35
	A. Shenanuydre for am't due his wife, Emily, 4½ d'ys, @ $1.25	6 62½
	Wm. Leverenson, 3 d'ys @ $1.60; 3 d'ys @ 1.75	10 05
	Morris Howard, for am't due his wife, Caroline, 4 d'ys @ 1.25; 1 watch, 60 cts.	6 60
	For am't due to M. Howard, Jr., 2 d'ys, @ 60; 1 watch, 50	1 70
	Adolph Hill, 1 watch	75
	Wm. Duarran, 2 d'ys, $1.75; 2 watch-, @ 75	5 00
	Alfred Jackson, for Monah Jackson, his wife, 4 d'ys, $1.25; ½ watch, 30	6 30
	Alfred Carter, for Fanny Carter, his wife, 5 d'ys, @ 1.15	5 75
	Louis Doctor, 2½ d'ys, @ 1.15	2 90
	Wm. Parker, for Julia Parker, his wife, 5 d'ys, @ 1.25; 1 watch, 75	7 00
		$215 37½
	Amount brought over	215 37½
	Adolph Hill, 1 day, @ 1.50	1 50
	Hellen Lunson, 2 days, @ 60	1 20
	Monah Cook	5 30
	Ned Johnson	5 95
	Peggy Brock	6 85
	Clay Brock	10 30
	Noel Duplesis	8 10
	Jane Monal	6 50
	Alpha McMahon	4 60
	Lazy Williams, 1 day, 1.20; 1 watch, 35	1 55
	Joseph Thomas, Jr., 2 d'ys, 60 cts.	1 20
	Fred. Williams, 7 d'ys, 1.25; ½ watch, 30 cts.	8 95
	Total	$277 32½

160 24th Jud'l Dist. Court, Parish of Plaquemines.

P. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson, att'y for the several parties whose names are fully set forth in the annexed account, made a part of this motion, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour

plantation, consisting of a large quan-ity of sugar and molasses now on said place, as well as the moveable property used in cultivating same, and upon further suggesting that the several movers herein, whose full names, as well as the amounts due them, are fully set forth in the annexed detailed account during the past month and the early part of the present month, have been working together in harvesting the said crop at the rates and for the times set forth in the annexed account, which the Messrs. Dragon have agreed
161 to pay to them, as stated therein, and that said amounts remain due, owing, and unpaid to them, and that they are entitled for the amounts so due them to the laborers' privilege on the sugar, molasses, and moveable property used in the cultivation of the Monsecour pl't'n so seized on said property and now in the sheriff's custody;

And upon purchaser showing that the said privilege is of a higher rank than that of the seizing creditor, Mr. B. Saloy's:

It is ordered by this hon. court that this motion of third opposition of the laborers named in the present motion be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that movers recover judgment against Messrs. P. B. Dragon & Bro. for the several amounts placed opposite their names in the annexed account, made a part of this motion, with costs; that the sheriff do retain out of the proceeds of the sale of the property now in his hands a sum sufficient to pay movers' claims, with interest and costs; and that Mr. B. Saloy, the sheriff, and all other parties in interest, do show cause on the 1st Monday of March, 1884, why movers'
162 claims should be paid, in preference to and with privilege over all others, out of the proceeds of the sale of the property provisionally seized in this cause.

Parish of Plaquemines, Dec. 31st, 1883.

A. E. LIVAUDAIS, *Judge.*

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson and Rob't Hingle, atty's for Henry Hingle, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quantity of sugar and molasses now on said place; and upon further suggesting to the court that mover was employed as overseer on said place by defendants herein at a salary of fifty dollars per month; and that, in accordance with the terms of said contract, he has for the past several months
163 faithfully fulfilled the duties of overseer on said Monsecours pl't'n, and a balance of sixty $\frac{50}{100}$ dollars is still due, owing, and unpaid to petitioner, for which amount mover has a lien and privilege under art. 3217 of the civil code on the crop now under seizure:

It is ordered by this hon. court that this motion of third opposi-

tion of Henry Hingle be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment against Messrs. P. B. Dragon & Bro. for the sum of sixty $\frac{50}{100}$ dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest, do show cause, on the 1st Monday of March, 1884, why mover's claim should not be paid, in preference and privileges to all others, out of the proceeds of the property provisionally seized in the present cause.

Parish of Plaquemines, Dec. 31, 1884.

A. E. LIVAUDAIS, *Judge.*

164 24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson, att'y for July Garo, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro. and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quantity of sugar and molasses now on said place; and upon further suggesting to the court that Pierre B. Dragon & Bro. employed mover to boil said crop of sugar and molasses and now owes to mover the sum of one hundred and twenty-five dollars for labor performed in doing so, and that the said sugar & molasses now under seizure was boiled, manufactured, and made by the labor of mover, and that mover is entitled to a privilege thereon or to the proceeds thereof, as laborer, superior to th-e asserted by the landlord, B. Saloy, herein:

It is ordered by this hon. court that this motion of third opposition of July Garo be filed; that copies thereof be served on
165 Mr. B. Saloy and the sheriff of this parish; that mover recover judgment *versus* P. B. Dragon & Bro. for the sum of one hundred and twenty-five dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover's claim should not be paid, in preference and privilege to all others, out of the proceeds of the sale of the property provisionally seized in the present cause.

Let the within motion of intervention be filed as herein prayed for and according to law.

Parish of Plaquemines, Dec. 31, 1883.

A. E. LIVAUDAIS.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson and Robert Hingle, att'ys for L. Leopold, and on suggesting to the court that in the above-entitled

cause B. Saloy has caused a writ of provisional seizure to issue
166 against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecours pl't'n, consisting of a large quantity of sugar and molasses now on said place, as well as the moveable property thereon, which serves to the working or cultivation of the same; and upon further suggesting to the court that the sum total of one hundred and twenty-seven $\frac{1}{100}$ dollars — tickets on the said Monsecour pl't'n were issued to the laborers on said place during the past three months as due bills for money due for labor and services performed in producing said crop now under seizure; and on showing to the court that said laborers transferred, assigned, and set over, with the laborers' privilege on said crop now seized, said due bills, with their rights thereunder, and their claims for all amounts due arising out of said contract for labor performed on said crop with Messrs P. B. Dragon & Bro. to mover, L. Leopold; and upon showing due notice of said transfer of said claims and written acknowledgments of said indebtedness by and to Messrs. P. B. Dragon & Bro., annexed hereto and made part hereof;

167 And upon showing that mover, under said transfers, with rights and privilege thereto annexed, has the laborers' lien and privilege for the sum of one hundred and twenty seven $\frac{1}{100}$ dollars superior to Mr. B. Saloy'- privilege:

It is ordered, on said property so seized by this hon. court, that this motion of third opposition of L. Leopold be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment against Mes-rs. P. B. Dragon & Bro. for the sum of one hundred and twenty-seven $\frac{1}{100}$ dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claims, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover's claims should not be payed, with preference and privilege to all others, out of the proceeds of the property provisionally seized in the present cause.

Parish of Plaquemines, Dec. 31st, 1883.

A. E. LIVAUDAIS, *Judge.*

P'TE À LA HACHE, *Dec. 15th*, 1883.

168 We hereby acknowledge that one hundred and twenty-seven $\frac{1}{100}$ dollars of the Monsecour pl't'n tickets, transferred to Mr. L. Leopold by the hands on the Monsecour pl't'n, were duly issued by us as evidence or due bills for labor done and performed by said hands on the crop of 1883, and are due, owing, and unpaid.

PIERRE B. DRAGON & BRO.

24th Judicial Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson and Rob't Hingle, att'ys for Geo. H. Hardeman, and on suggesting to the court that in the above-

entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecours plantation, consisting of a large quan-ity of sugar and molasses now on said place; and upon further suggesting to the court that mover was employed as engineer on said place by defendants herein at a salary of — per month, and that, in accordance
169 with the terms of said contract, he has for the past several months faithfully fulfilled the duties of engineer on said Monsecour pl't'n, and a balance of three hundred dollars is still due, owing, and unpaid to petitioner, for which amount mover has a lien and privilege under art. 3217 of the civil code on the crop now under seizure, it is ordered by this hon. court that this motion of 3rd opposition of Geo. H. Hardeman be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment against P. B. Dragon & Bro. for the sum of three hundred dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover's claim should not be paid in preference and privilege to all others out of the proceeds of the property previously seized in the present cause.

Parish of Plaquemines, Dec. 31, 1883.

A. E. LIVAUDAIS, *Judge.*

170 24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson, att'y for Geo. H. Crowther, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on Monsecour pl't'n, consisting of sugar, molasses, & rice now on said place, and all the moveable property which serves to the working of said plantation;

And on further suggesting to the court that your mover is the purchaser and transferee of certain claims for labor done and performed on said crop and plantation, with the laborers' privileges bearing on said crop as accessory to said rights; and on showing to the court that upon presentation of said claims to Mr. Pierre B. Dragon & Bro. they acknowledged said indebtedness and gave a draft in payment thereof on Mr. S. Block, of N. O., for the sum of sixty-seven dollars of the amount of said claims, which drafts Mr. S. Block refuses to pay, and which is annexed and forms
171 part of this motion; and on further suggesting to the court that by virtue of the privileged claims duly transferred to mover, and acknowledgment thereof for the above amount, that mover is entitled to have his said privilege securing said claims recognized on the product of the crop now under seizure, or the proceeds

thereof, as the first lien and privilege thereon, and as superior to the landlord privileged asserted by Mr. B. Saloy:

Wherefore it is ordered by this hon. court that this motion of Geo. H. Crowther in third opposition be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment *versus* P. B. Dragon & Bro. for the sum of sixty-seven $\frac{10}{100}$ dollars, with costs; that the sheriff retain out of the proceeds of the property seized in this cause a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover's claim should not be paid in preference to all others out of the proceeds of the property provisionally seized in the present cause.

Parish of Plaquemines, Dec. 31st, 1883.

(Signed) A. E. LIVAUDAIS, *Judge.*

172 Filed Dec. 31st, 1883.
A true copy.

D. A. THIBAUT.

24th Judicial District Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson, att'y for Patrice Lae, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quantity of sugar and molasses now on said place, and all the moveable property which serves to the working of the said plantation; and on further suggesting to the court that mover was employed as laborer on said pl't'n in making, harvesting, and manufacture of said crop, for which labor and services which he rendered the sum of fifty dollars is still due, owing, and unpaid by Pierre B. Dragon & Bro. to your mover, and that mover has the laborers' privilege on said property now under seizure in
173 this cause superior to the privilege asserted by the landlord herein:

It is ordered by this hon. court that this motion of third opposition of Patrick Lae be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment *vs.* P. B. Dragon & Bro. for the sum of fifty dollars, with costs; that the sheriff retain out of the proceed- of the property now in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover'- claim should not be paid in preference and by privilege before all other- out of the proceeds of the sale of the property provisionally seized in the present cause.

Parish of Plaquemines, Dec. 31st, 1883.

(Signed) A. E. LIVAUDAIS, *Judge.*

Filed Dec. 31, 1883.
A true copy.

D. A. THIBAUT.

24th Judicial Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

174 On motion of James Wilkinson & Rob't Hingle, att'ys for Henry Hingle, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quan-ity of sugar and molasses now on said place; and upon further suggesting to the court that mover was employed as overseer on said place by defendants herein at a salary of fifty dollars per month, and that in accordance with the terms of said contract he for the past several months faithfully fulfilled the duties of overseer on said Monsecour pl't'n and a balance of sixty $\frac{50}{100}$ dollars is still due, owing, and unpaid to petitioner, for which amount mover has a lien and privilege under art. 3217 of the civil code on the crop now under seizure:

It is ordered by this hon. court that this motion of third opposition of Henry Hingle be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment against Messrs. P. B. Dragon & Bro. for the sum of
175 sixty $\frac{50}{100}$ dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover's claim should not be paid in preference to all others out of the proceeds of the property provisionally seized in the present cause.

Parish of Plaquemines, Dec. 31st, 1884.

(Signed) A. E. LIVAUDAIS.

Filed Dec. 31, 1883.
A true copy.

D. A. THIBAUT.

24th Judicial Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson and Rob't Hingle, att'ys for Geo. H. Hardeman, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quantity of sugar and
176 molasses now on said place; and upon further suggesting to the court that mover was employed as engineer on said place by defendant herein at a salary of — per month, and that in ac-

cordance with the terms of said contract he has for the past several — faithfully fulfilled the duties of engineer on said Monsecour pl't'n, and a balance of three hundred dollars is still due, owing, and unpaid to petitioner, for which amount mover has a lien and privilege under art. 3217 of the civil code on the crop now under seizure:

It is ordered by this hon. court that this motion of third opposition of Geo. H. Hardeman be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish.

That mover recover judgment against P. B. Dragon & Bro. for the sum of three hundred dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of Dec., 1884, *of March*, why mover's claim should not be paid in preference and privilege to all others out of the pro-
177 ceeds of the property provisionally seized in the present cause.

Parish of Plaquemines, Dec. 31, 1883.

(Signed) A. E. LIVAUDAIS, *Judge.*

Filed Dec. 31st, 1883.

A true copy.

D. A. THIBAUT.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson, att'y for July Garo, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quan-ity of sugar and molasses now on said place; and upon further suggesting to the court that Pierre B. Dragon & Bro. employed mover to boil said crop of sugar and molasses & now owes to mover the sum of one hundred and twenty-five dollars for labor performed in doing so, and that the said sugar and molasses now under seizure was boiled, manufactured, and made by the
178 labor of mover, and that mover is entitled to a privilege thereon to the proceeds thereof as laborer superior to the privilege asserted by the landlord, B. Saloy, herein; it is ordered by this hon. court that this motion of third opposition of July Garo be filed; that copies thereof be served on B. Saloy and the sheriff of this parish; that mover recover judgment *versus* P. B. Dragon & Bro. for the sum of one hundred and twenty-five dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover's claim should not be paid in preference and privilege to all others out of the proceeds of the sale of the property provisionally seized in the present cause.

Let the within motion of intervention be filed as herein prayed for and according to law.

Parish of Plaquemines, Dec. 31, 1883.

(Signed) A. E. LIVAUDAIS, *Judge.*

Filed Dec. 31, 1883.

A true copy.

D. A. THIBAUT.

179 24 Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON.

On motion of James Wilkinson and Robert Hingle, att'ys for L. Leopold, and on suggesting to the court that in the above-entiled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quantity of sugar and molasses now on said place, as well as the moveable property thereon which serves to the working or cultivation of the same; and upon further suggesting to the court that the sum total of one hundred and twenty-seven $\frac{10}{100}$ dollars — tickets on the said Monsecour pl't'n were issued to the laborers on said place during the past three months as due-bills for money due for labor and services performed in producing said crop now under seizure, and on showing to the court that said laborers transferred, assigned, and set over with the laborers' privilege on said crop now seized said due-bills, with their rights thereunder,

180 and their claims for all amounts due arising out of said contract for labor performed on said crop, with Messrs. P. B. Dragon & Bro. to mover, L. Leopold, and upon showing due notice of said transfer of said claims and written acknowledgement of said indebtedness by and to Messrs. P. B. Dragon & Bro., annexed hereto and made part hereof; and upon showing that mover, under said transfer, with rights — privileges thereto annexed, has the laborers' lien and privilege for the sum of one hundred and twenty-seven $\frac{10}{100}$ dollars, superior to Mr. B. Saloy'- privilege on said property so seized, it is ordered by this hon. court that this motion of third opposition of L. Leopold be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that mover recover judgment against Messrs. P. B. Dragon & Bro. for the sum of one hundred and twenty-seven $\frac{10}{100}$ dollars, with costs; that the sheriff retain out of the proceeds of the property in his hands a sum sufficient to pay mover's claim, with interest and costs, and that B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why mover's claim should not be paid with preference and privilege to all others out of the proceeds of the property provisionally seized in present cause.

Parish of Plaquemines, Dec. 31st, 1883.

181 (Signed) A. E. LIVAUDAIS, *Judge.*

Filed Dec. 31, 1883.
A true copy.

D. A. THIBAUT.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY *vs.* P. B. DRAGON & BRO.

On motion of James Wilkinson, att'y for the several parties whose names are fully set forth in the annexed account, made a part of this motion, and on suggesting to the court that in the above-entitled cause B. Saloy has caused a writ of provisional seizure to issue against P. B. Dragon & Bro., and has seized and has now in the sheriff's possession the product of the crop of 1883 on the Monsecour pl't'n, consisting of a large quan-ity of sugar and molasses now on said place, as well as the moveable property used in cultivating same; and upon further suggesting that the several movers herein, whose full names, as well as the amounts due them, are fully set forth in the annexed detailed account, during the past month and the early part of the present month, have been working together in harvesting the said crop at the rates and for the time
182 set forth in the annexed account, which the Messrs. Dragon have agreed to pay to them as stated therein, and that said amounts remain due, owing, and unpaid them, and they are entitled, for the amounts so due them, to the laborers' privilege on the sugar, molasses, and moveable property used in the cultivation of the Monsecour pl't'n so seized on said property and now in the sheriff's custody; and upon further showing that the said privilege is of a higher rank then that of seizing creditor, Mr. B. Saloy:

It is ordered by this hon. court that this motion of third opposition of the laborers named in the present motion be filed; that copies thereof be served on Mr. B. Saloy and the sheriff of this parish; that movers recover judgment against Messrs. P. B. Dragon & Bro. for the several amounts placed opposite their names in the annexed account made a part of this motion, with costs; that the sheriff do retain out of the proceeds of the sale of the property now in his hands a sum sufficient to pay movers' claim, with interest and costs, and that Mr. B. Saloy, the sheriff, and all other parties in interest do show cause, on the 1st Monday of March, 1884, why
183 movers' claim should not be paid in preference to and with privilege over all others out of the proceeds of the sale of the property provisionally seized in this cause.

Parish of Plaquemines, Dec. 31st, 1883.

(Signed) A. E. LIVAUDAIS, *Judge.*

Filed Dec. 31, 1883.
A true copy.

D. A. THIBAUT.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY
vs.
P. B. DRAGON & BRO. } No. 617.

On motion of James Wilkinson, att'y of C. V. Thibaut, sheriff, and on suggesting to the court that in the above-entitled cause that the plaintiff, B. Saloy, cause to be issued from this hon. court a writ of provisional seizure, by virtue of which mover seized a large amount of moveable property on the Monsecour pl't'n, to wit, the crop remaining thereon, consisting of cane, sugar, and molasses, horses, cows, carts, and all of the moveable property and utensils usually employed in carrying a sugar pl't'n, and that in the present cause the sheriff herein has incurred considerable cost in harvesting,
manufacturing, feeding, and keeping said products, animals,
184 and moveables, and that for his cost and the expenses incurred and payed by him, as aforesaid, the sum of six hundred and twelve 51½-100 dollars is due, owing, and unpaid to mover by the said plaintiff herein, as is evidenced by the annexed detailed bill of said sheriff's costs, made a part of this motion; and on further suggesting to the court that the said B. Saloy, under and by virtue of a forthcoming bond in the above cause, has taken into his possession the property as aforesaid, and has caused — same to be sold, and has now the proceeds of same in his possession, and that he is legally obliged and that it is his duty to pay the charges of mover as aforesaid, wherefore it is ordered by this hon. court that B. Saloy show cause, on the 7th day of March, 1884, 10 a. m., why said cost should not be taxed according to the foregoing bill, and the said B. Saloy should not be condemned to pay into the hands of V. C. Thibaut, sheriff, the sum of six hundred and twelve 51½-100 dollars to pay and satisfy his costs and expenses herein.

Service accepted.

E. HOWARD McCALEB,
Att'y — B. Saloy.

185 24th Jud'l Dist. Court for the Parish of Plaquemines.

B. SALOY
vs.
P. B. DRAGON & BRO. } No. 617.

Now comes the plaintiff, Bertrand Saloy, by his undersigned attorney, who, for exception to the rule of Chas. V. Thibaut, sheriff of this parish, made returnable this day, says—

1st. That there is a non-joinder of parties in said rule; that defendants are necessary parties to proceedings by rule to tax sheriff's costs, and should have been served and notified.

2nd. That since said rule was filed defendants have made a *cessu bonorum* under the insolvent laws of this State; that said surrender has been accepted and a stay of proceedings ordered; that this cause has been transferred to said insolvency proceedings, in which alone

the sheriff can proceed contradictorily with all parties in interest; that this appearer here refers to said insolvent proceedings, entitled P. B. Dragon & Bro. *vs.* Their Creditors, No. — of the docket of this court, and makes the same a part of this exception.

3rd. That said rule is premature and cannot now be entertained.

Wherefore he prays that these exceptions be maintained
186 and said rule dismissed, with costs.

E. HOWARD McCALEB,
Att'y B. Saloy, Plaintiff.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY
vs.
P. B. DRAGON & ATHANASE DRAGON. } No. 617.

Plaintiff offers in evidence two notes, each dated New Orleans, 19th July, 1881, drawn by P. B. Dragon to his own order, by him endorsed, and endorsed also by Athanase Dragon, each for $4,800, payable 1st Oct., 1882, and 1st Oct., 1883; 2, copy act of lease from Jules Lapene to P. B. Dragon, passed before A. Hero, Jr., not. pub., on 19th July, 1881, and admission thereto attached, signed by Pierre B. Dragon; lease of B. Saloy to P. B. Dragon & Bro. of Ste. Sophie tract under private signature, dated Feb'y 1st, 1883.

24th Jud'l Dist. Court, Parish of Plaquemines.

B. SALOY
vs.
P. B. DRAGON & ATHANASE DRAGON. } No 617.

187 On motion of A. Lartigue, Esq., on behalf of E. Howard McCaleb, of counsel for plaintiff, and on adducing due proof of plaintiff's demand, and of considering the law and the evidence to be in favor of said plaintiff and against the defendant-, it is, therefore, ordered, adjudged, and decreed that the judgment by default herein entered on the 21st day of March, 1884, be now confirmed and made final, and that said plaintiff, Bertrand Saloy, do have and recover of the defendant-, Pierre B. Dragon and Athanase Dragon, *in solido*, 1st, the sum of two thousand eight hundred dollars, less the sum of two thousand and twenty-five $\frac{2}{100}$ dollars, paid on account Dec. 23, 1882, and the further sum of one thousand and twenty-six $\frac{94}{100}$ dollars paid on account Nov. 10th, 1883, with eight per cent. interest from the 1st day of October, 1882, until paid; and, secondly, the sum of four thousand eight hundred dollars, with 8% interest from the 1st of Oct., 1883, until paid, with ten per (10%) cent. attorney-' fees upon said amounts, with lessor's lien and privilege upon all the moveable- found upon the premises and attached to the Monsecour pl't'n; and it is further ordered, adjudged,
188 and decreed that said defendants be condemned to deliver unto plaintiff two hundred barrels of rough rice of first quality; or, in default thereof, to pay unto plaintiffs the further sum of eight hundred ($800) dollars in lieu thereof, with lessor's lien and

privilege upon the moveables found upon the premises and attached to the Ste. Sophie tract, in this parish; and it is further ordered that the property herein provisionally seized be sold to pay and satisfy plaintiff's claim, with costs.

Judgment rendered and signed March 28th, 1884, it being the last day of the present term.

A. E. LIVAUDAIS, *Judge.*

Twenty-fourth Judicial District Court in and for the Parish of Plaquemines.

I, Demas A. Thibaut, clerk of the twenty-fourth judicial district court of Louisiana in and for the parish of Plaquemines, do hereby certify that the foregoing — pages contain and form a full,
189 comple-, true, and perfect transcript of the record and proceedings had in the case of Bertrand Saloy *vs.* P. B. Dragon & Bro., No. 617 of the docket of the said court.

Witness my hand and the seal of said court this — day of May, A. D. 1884.

—— ——, *Clerk.*

I, Albert E. Livaudais, judge of the twenty-fourth judicial district court of Louisiana, do certify that Damas A. Thibaut, whose name is signed to the above certificate as clerk of the twenty-fourth judicial district court for the parish of Plaquemines, was, at the time of signing said certificate and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hands this 1st day of May, A. D. 1884.

—— ——, *Judge.*

190 *Motion for New Trial Set for Hearing.*

Extract from Minutes.

NEW ORLEANS, SATURDAY, *January* 30, 1886.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

U. S. Circuit Court.

SIMON BLOCK
vs.
BERTRAND SALOY. } No. 10540.

On motion of counsel for both parties, it is ordered that the motion for a new trial in this cause be set down for hearing on Saturday, the 6th proximo, at 11 a. m.

Motion for New Trial Continued.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *February 6th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

U. S. Circuit Court.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

By consent of counsel for both parties, it is ordered that the motion of the defendant for a new trial in this cause be continued until Saturday, the 20th inst., at 11 a. m.

191 *Motion for New Trial Submitted.*

Extract from Minutes.

NEW ORLEANS, SATURDAY, *February 20th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge; Hon. Aleck Boarman, district judge.

U. S. Circuit Court.

SIMON BLOCK
vs.
BERTRAND SALOY. } No. 10540.

This cause came on to be heard on the motion for a new trial herein as to the second ground thereof, and, after hearing arguments of counsel for the respective parties, was submitted, when the court took time to consider.

Motion for New Trial Refused.

Extract from Minutes.

NEW ORLEANS, MONDAY, *May*, 31, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

U. S. Circuit Court.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

This cause came on to be heard on the second ground of the defendant's motion for a new trial herein, viz., "Because the verdict and judgment do not pass upon and dispose of the issues
192 raised by the pleadings and evidence, the jury having failed to pass upon defendant's reconventional demand," and was

argued by counsel; whereupon and upon consideration thereof it was ordered that the said application for a new trial be refused, and that the verdict and judgment herein rendered remain undisturbed.

Motion for New Trial Reinstated.

Extract from Minutes.

NEW ORLEANS, TUESDAY, *June 1st*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

U. S. Circuit Court.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

In this case it is ordered that the motion for new trial be reinstated, and by consent of counsel the said motion is fixed for hearing for Saturday next, the 5th day of June, 1886.

Motion of Plaintiff for Signature of Judgment.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *June 5th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

U. S. Circuit Court.

193 SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

This cause came on to be heard on the second ground of the defendant's motion for a new trial, viz., "Because the verdict and judgment do not pass upon and dispose of the issues raised by the pleadings and evidence, the jury having failed to pass upon the defendant's reconventional demand," and was argued by counsel for the respective parties; whereupon and upon consideration thereof it was ordered that the said application for a new trial be refused, but leave is given to the defendant to present the objections to the sufficiency of the verdict contained in this motion whenever the plaintiff shall move the court for judgment upon said verdict.

And thereupon counsel for plaintiff moved the court to sign the judgment herein, which motion being opposed by the counsel for the defendant upon the ground of the insufficiency of the verdict of the jury to authorize said judgment in that it did not pass upon the reconventional demand of defendant, the matter was argued by the counsel for the parties, respectively, and submitted, when the court took time to consider.

194 *Motion of Plaintiff for Signature of Judg't Granted.*

Extract from Minutes.

NEW ORLEANS, TUESDAY, *June 8th*, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

U. S. Circuit Court.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

In this cause the court having duly considered the matter of the signing of the judgment herein, it is ordered that the plaintiff's motion to sign the judgment in this cause be granted.

Bill of Exceptions. Filed 8th June, 1886.

United States Circuit Court, Eastern District of Louisiana.

SIMON BLOCH
vs.
BERTRAND SALOY. } No. 10540.

Be it remembered — on the trial of this cause, defendant having adduced evidence tending to prove that after deducting the amount of necessary supplies and money actually advanced by plaintiff to P. B. Dragon & Bro. (during the year 1883) to cultivate, gather, and manufacture the crops of sugar, rice, & etc., on "Monsecour plantation" from the net proceeds of said crops received and realized
195 by him from the said plantation during the year 1883 there remained a balance in his (plaintiff's) hands exceeding the sum of six thousand three hundred and sixty-seven ($6,367) dollars (difference between necessary supplies advanced and net proceeds of crops received and sold), and plaintiff having adduced evidence tending to prove the contrary, and defendant having adduced evidence tending to prove that P. B. Dragon & Bro. were indebted unto him (defendant) in the sum of six thousand three hundred and sixty-seven ($6,367) dollars for rent of "Monsecours plantation" for the year 1883, and for balance of rent of said plantation for the year 1882, and for which defendant had obtained judgment against P. B. Dragon & Bro., with recognition of landlord's lien, and which judgment remains due and unsatisfied, which rent and landlord's lien, plaintiff claimed, had been waived in his favor; and defendant having further adduced evidence tending to prove that plaintiff promised, agreed, and bound himself to pay over to him (defendant), in discharge of the amount due him for rent by P. B. Dragon & Bro. for the years 1883 and 1882, whatever balance remained in his hands after deducting the amount due him (plaintiff) for necessary supplies from the net proceeds of the crops of Monsecours planta-

tion for the year 1863, said agreement having been made
196 with the consent and approval of P. B. Dragon — Bro., and said Bloch adducing evidence to prove that his advances under his contract exceeded the proceeds of sale of the crops of said Dragon, the court, in instructing the jury, charged as follows, viz:

"Saloy presents his demand in reconvention for six thousand three hundred and sixty-seven (6,367) dollars. He denies owing Bloch anything, and alleges that Bloch owes him this sum. He says that under the contract Bloch furnished Dragon twelve thousand ($12,000) dollars, instead of sixteen thousand ($16,000) dollars; that the crop was received by Block himself, and sold for sixteen thousand ($16,000) dollars. Therefore he says to Bloch, If you advance only twelve thousand ($12,000) dollars, and received sixteen thousand ($16,000) dollars, you must pay me over four thousand ($4,000) dollars, because you violated the contract with me, and you must pay me what is left. Now I will present the case more fully.

"Saloy says that Bloch admits that the amounts advanced by him on crop was only twelve thousand ($12,000) dollars, and that it sold for sixteen thousand ($16,000) dollars, and that the difference
197 belongs *belongs* to him; besides, he says that in the amount of twelve thousand ($12,000) dollars furnished *that* he charges Dragon with things not in their nature necessary supplies, and which were not covered under the factor's lien in the contract. How much that was I cannot say; it is a matter of fact for you—that is, the case of Saloy in reconvention. Let me say upon that part of the case that if you have heard the advice of the court, — you should find that he (Bloch) only did advance twelve thousand ($12,000) dollars, and collected sixteen thousand ($16,000) dollars, four thousand ($4,000) dollars of it certainly belongs to Saloy. If you find in the twelve thousand ($12,000) dollars, as a matter of fact, that there was one thousand ($1,000) dollars for supplies not covered by the factor's lien, that one thousand ($1,000) dollars belongs to Saloy, because Saloy promised to stand aside to the extent *of* only of allowing Bloch to collect his money for necessary supplies as a factor. And plaintiff having admitted that he had received one hundred (100) sacks of rice from St. Sophie plantation, also leased from defendant by Dragon Bro., which he sold for three hundred and fifty ($350)
198 dollars, and consenting that defendant should be credited for said amount, the court further charged the jury 'that Bloch is responsible for three hundred and fifty ($350) dollars, proceeds of one hundred (100) sacks of rice received from the St. Sophie plantation and sold by him. Let this one hundred (100) sacks of rice be charged against Bloch as if it was charged against him by Saloy; that excludes the necessity of going from one plantation to another."

And after the jury had returned into court and rendered their verdict plaintiff's counsel moved the court to enter up judgment upon the said verdict as rendered by the jury (in accordance therewith), and thereupon defendant, through his counsel, then and there objected for the reason that the jury had failed to act upon defendant'-reconventional demand, and because the said verdict is not respon-

sive to the issues involved and is informal and defective, in that it fails to pass upon defendant's reconventional demand; but the court granted the motion made by plaintiff's counsel notwithstanding defendant's objections, ordered the judgment to be entered up
199 as rendered, because the court held that the jury had in its verdict passed upon both the original and reconventional demands.

To which ruling of the court ordering judgment to be entered up in accordance with the verdict rendered by the jury herein counsel for defendant then and there excepted and reserved this his bill of exception and tendered the same for signature; which is accordingly done.

(Signed) EDWARD C. BILLINGS, *Judge.*

W. S. B.,
For Pl'ff.

Judgment. Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. April Term, 1885.

NEW ORLEANS, TUESDAY, *June* 23*rd*, 1885.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

SIMON BLOCH
vs. } No. 10540.
BERTRAND SALOY.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged, and decreed that the plain-
200 tiff, Simon Bloch, an alien, subject of the Emperor of Germany, do have and recover of and from the defendant, Bertrand Saloy, a citizen of the State of Louisiana, residing in the parish of Orleans, the sum of thirty-eight hundred and twelve $\frac{30}{100}$ dollars ($3,812.30) less three hundred and twelve $\frac{30}{100}$ ($312.30) for one hundred sacks rice from St. Sophie plantation and the cost of suit.

Judgment rendered June 23rd, 1885.

Judgment signed June 8th, 1886.

(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and Order for Writ of Error. Entered and Filed 10*th June* 1886.

United States Circuit Court, Eastern District of Louisiana.

SIMON BLOCH
vs. } No. 10540.
BERTRAND SALOY.

On motion of E. Howard McCaleb, Esq., attorney for defendant, and on suggesting that there is error to defendant's prejudice in

the judgment herein rendered against him and signed June 8th, 1886, it is ordered that defendant, Bertrand Saloy, be allowed a writ of error from said judgment, returnable, according to law, to the Supreme Court of the United States on the second Monday
201 of October, A. D. 1886, and that the same operate as a supersedeas upon the said defendant giving bond, conditioned and approved according to law, in the sum of five thousand ($5,000) dollars.

Bond for Writ of Error. Filed June 10th, 1886.

Know all men by these presents that we, Bertrand Saloy, as principal, —— ——, as surety, are held and firmly bound unto Simon Bloch, plaintiff in the cause No. 10540 of the docket of the circuit court of the United States for the eastern district of Louisiana, in the full and just sum of five thousand ($5,000) dollars, to be paid to the said Simon Bloch, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately at a circuit — of the United States, fifth judicial circuit, holding sessions in and for the eastern district of
202 Louisiana, in a suit depending in said circuit court, wherein said Simon Bloch was and is plaintiff and Bertrand Saloy defendant, judgment was rendered against said Bertrand Saloy, defendant; and the said Bertrand Saloy having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit. and a citation directed to the said Simon Bloch citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Bertrand Saloy shall prosecute his writ to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

B. SALOY. [L. S.]
J. HERNANDEZ. [L. S.]

Sealed and delivered in the presence of—
E. HOWARD McCALEB.

Bond approved as to form and sufficiency of surety.
June 10th, 1886.

EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

Personally appeared Joseph Hernandez, who, being duly
203 sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, parish of

Orleans, and is worth the full sum of five thousand ($5,000) dollars over and above all his debts and liabilities and property exempt from execution.

J. HERNANDEZ.

Subscribed and sworn before me this 10th day of June, 1886.

E. R. HUNT,

Commissioner U. S. Circuit Court, Eastern District of Louisiana.

204 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 203 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial — the case of Simon Bloch *vs.* Bertrand Saloy, No. 10540 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 25th day of August, A. D. 1886.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 25th day of August, A. D. 1886.

EDWARD C. BILLINGS, *Judge.*

205 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between Simon Bloch, plaintiff, and Bertrand Saloy, defendant, in the cause No. 10540 of the docket of said circuit court, said judgment having been signed June 8th, A. D. 1886, a manifest error hath happened, to the great damage of the said Bertrand Saloy, against whom judgment has been rendered, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under

your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 10th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 10540. Bertrand Saloy, pl'ff in error, *vs.* Simon Bloch, def'd't in error. Writ of error. Filed June 10, 1886. E. R. Hunt, clerk.

206 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Simon Bloch, plaintiff in cause No. 10540 of the docket of said court, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Bertrand Saloy is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Bertrand Saloy in cause No. 10540 of the docket of said circuit court, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 10th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

207 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 10540. Simon Bloch *vs.* Bertrand Saloy. Citation. Filed June 11, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Jun. 10, 1881, by the U. S. marshal, and on the 10 day of June, 1886, I served a true duplicate of the within citation in error on Simon Block, appel-ee, by handing the same to him in person in the city of New Orleans, & leaving the same in his hands.

R. B. PLEASANTS,
U. S. M.

JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a lawful deputy U. S. marshal for the eastern district of Louisiana, and that the above-mentioned service made by me and reported above is true and correct.

JOHN BAKER.

Sworn to & subscribed before me this 11th day of June, 1886.

E. R. HUNT, *Clerk.*

Endorsed on cover: E. Louisiana C. C. U. S. No. 1019. Bertrand Saloy, plaintiff in error, *vs.* Simon Bloch. Filed September 27, 1886.

Office Supreme Court U. S.
FILED
NOV 11 1889
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

BERTRAND SALOY,
Plaintiff in Error,

vs.

SIMON BLOCH.

No. 92.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for the Plaintiff in Error.

E. HOWARD McCALEB,
WM. A. MAURY,
For Plaintiff in Error.

R. O. Polkinhorn, Printer, 632 & 634 D Street, N. W.

Supreme Court of the United States.

OCTOBER TERM, 1889.

BERTRAND SALOY,
Plaintiff in Error,

vs.

SIMON BLOCH.

No. 92.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for the Plaintiff in Error.

This is a suit brought by the defendant in error to recover from the plaintiff in error the full sum of $6,266.23.

Petition.

The petition, filed April 21, 1884, (pp. 1–3), alleges that on January 26, 1883, petitioner made a contract with Pierre B. Dragon and Athanase Dragon, by act before a notary (pp. 22–27), to advance the funds for the cultivation of and for furnishing the necessary supplies for a plantation in the parish of Plaque-

mines, Louisiana, called "Monsecours," during the year 1883;

That at the time this contract was made the Dragons were lessees of Saloy, the plaintiff in error, who became a party to the contract waiving his superior rights as landlord as against the plantation, buildings, improvements, &c., including the crop to be raised in 1883, and binding himself to carry out the terms of the contract to the end that the said land might be cultivated, and the claims of petitioner and Saloy paid out of the crop to be raised;

That on December 1, 1883, Saloy, in violation of his agreement, by action, seized all the buildings of the Dragons on the plantation, the growing crop thereon, and the crop then being manufactured, placing all in the Sheriff's possession and damaging petitioner in a sum exceeding the amount claimed;

That Saloy, having giving bond in said suit, took the property and sold it, and converted the proceeds without paying what was due petitioner;

That petitioner is advised that at the time of said seizure the Dragons were not indebted at all to Saloy;

That the Dragons are without means to pay petitioner, and that their condition is the result of the illegal and malicious proceedings of Saloy.

Defendant's Exceptions.

The defendant filed the following exceptions to the petition on May 3, 1884. (p. 4.)

1. That petition shows no cause of action;

2. That plaintiff cannot maintain this action without first obtaining a judgment against the Dragons, who are necessary parties to this suit;

3. That the proceedings and judgment (pp. 55–84), in the defendant's suit against the Dragons cannot be questioned collaterally;

4. That defendant's liability, if any, on the release bond given by him in the suit against the Dragons cannot be enforced in the manner herein attempted;

5. Exceptor pleads the judgment in said suit as *res judicata* as to the necessity for and validity of said seizure, and as to the validity and rank of the privilege claimed in said suit, and avers that the judgment cannot be collaterally attacked. (See the record of this suit, pp. 54–84.)

On December 9, 1884, the exceptions were overruled and defendant required to answer. (p. 6.)

Answer and Plea in Reconvention.

On December 17, 1884, defendant file
and plea in reconvention. (pp. 6–10.)

The answer denies each and all of t
of the petition, except in so far as adm

It then avers that the suit against
and the seizure therein made were not
any contract or injurious to petitioner

That petitioner expressly and impl
respondent's acts by furnishing the sheriff money for
cultivating, harvesting and manufacturing the crop after said seizure, and subsequently received from the sheriff the amounts so advanced, which were paid by respondent, and that petitioner is estopped to contest the validity and legality of said proceedings.

As plaintiff in reconvention defendant avers that when he acquired the Monsecours and St. Sophie

plantations, on September 16, 1882, they were subject to a lease to the Dragons from John B. Levert, dated in February, 1882, and expiring December 31, 1882.

That at that time Monsecours was also subject to a lease to P. B. Dragon from Jules Lapene for five years from January 1, 1881, at a rent of $4,800 a year, for which sum P. B. Dragon had made his five notes payable to his own order, and endorsed by him and by Athanese Dragon as surety, and payable respectively on October 1 in each year of the lease. (pp. 52–54.)

That by argreement annexed to this lease, P. B. Dragon admitted defendant to be the lessor by subsequent purchase. (p. 54.)

That Bloch advanced the Dragons under the agreement $7,500, taking their notes for the same, that the notes were secured under the agreement by a lien and privilege on the crops of rice, sugar and molasses and other products for the full sum of $15,000, and that defendant waived his preference as lessor that Bloch might be reimbursed out of the crops of 1883, subject, however, to the condition that 350 sacks of rice should be left on the plantation out of the crop.

That on February 1, 1883, reconvener leased the St. Sophie plantation to the Dragons for three years for 200 barrels of rough rice, of first quality, to be delivered on October 1st of each year;

That the rice due reconvener under this lease was sent to petitioner Bloch, who promised to pay reconvener the proceeds thereof, $350.00, but has failed to do so, notwithstanding amicable demand;

That the Dragons became insolvent and, in October, 1883, two of their creditors, West & Son (p. 69) and Joseph David, instituted suit against the Dragons and seized 100 barrels of rice and a threshing machine, which were subject to the privileges of reconvener and Bloch;

That reconvener applied to Bloch to prevent the spoliation and destruction of the property.

That Bloch at first promised to make common cause with reconvener, but, afterwards, declined to do so, saying he had been paid and had no further interest in the property;

That after a delay of several weeks reconvener was compelled to act alone, which he did, with the knowledge, consent and approval of Bloch, by filing a third opposition in the suit of *West & Sons* v. *Dragons*, which was maintained, reconvener realizing $224.00 thereupon ;

That on November 27, 1883, reconvener brought suit on two of the rent notes held by him, and obtained provisional seizure of the property subject to his lien of lessor, and finally obtained judgment with lessor's lien and privilege upon all the movables on Monsecours plantation ;

That after the provisional seizure reconvener bonded the property seized ;

That a large number of laborers filed opposition in said suit, and their claims were allowed to the extent of $1,158.60;

That reconvener has sold the property bonded by him, and that, after deducting costs charges and claims, there only remained a balance of $1,258.28 to be applied on account of his judgment, leaving a balance due him of $6,017, for which sum he is enti-

tled to judgment against Bloch for the reasons following, namely, that subsequent to the contract of January 26, 1883, between Bloch and the Dragons, it was agreed that Bloch, after paying himself out of the proceeds of the crops, and deducting what might be due the Dragons by reconvener, pay the balance to reconvener in discharge of the rent due; that Block wholly failed to do this; that the amount advanced by Bloch to the Dragons was $12,000, whereas Bloch received from sales of crops more than $19,000, thus leaving a balance of $7,000, which he withholds from reconvener, and therefore reconvener is entitled to judgment for $6,017, the balance due him for rent of the said property. Reconvener demands judgment for $6,367 with interest, costs, &c., and for all general and equitable relief.

The case was tried by jury, and several bills of exception were taken by defendant to the action of the court below, and the following verdict was rendered:

> "We the jury find in favor of plaintiff in the sum of thirty-eight hundred and twelve 30-100 dollars, less three hundred and twelve 30-100 dollars for one hundred sacks of rice from St. Sophie plantation."

A motion for a new trial was made by defendant upon various grounds on which, after hearing, the presiding Judge Hon. Aleck Boarman made the following order viz:

> "In this case the Court decides adversely to defendant on all the grounds for a new trial herein urged with the exception of the second

ground, to wit: Because the verdict and judgment do not pass upon and dispose of the issues raised by the pleadings and evidence, the jury having failed to pass upon defendant's reconventional demand which matter and the final adjudication of the motion for a new trial herein made on said ground is continued until next term for hearing and decision before his Hon., Judge E. C. Billings."

The motion for a new trial, referred by the judge who presided and heard the evidence, Hon. Aleck Boarman, to another judge who was not present, did not hear the evidence, and was entirely ignorant of the facts, came up before his Honor Judge Billings, who required plaintiff's counsel to move to enter up judgment in accordance with the verdict, which was objected to by defendant, and which motion being granted and judgment entered up in conformity with the verdict, defendant took a bill of exceptions to the ruling of the Court. (R. pp. 87-89.) The judgment was signed by Judge E. C. Billings, who did not preside at the trial, and from this judgment defendant prosecutes this writ of error.

Assignments of Error.

First. The court below erred in overruling the exceptions filed by defendant in the cause, and plaintiff in error, to the petition, and compelling him to answer.

Second. The court below erred in charging the jury as set forth in the first bill of exceptions, No. 1 (pp. 21, 22).

Third. The court erred in its opinion and instructions stated in the second bill of exceptions (p. 29)

in refusing to charge, as requested by defendant's counsel, and in the charge as given to the jury recited in said bill of exceptions.

Fourth. The court below erred in refusing to give the instructions requested by counsel for B. Saloy, and in the instructions as given and set forth in the bill of exceptions No. 3 (pp. 40-42).

Fifth. The trial judge, Hon. Aleck Boarman, erred in referring defendant's motion for a new trial to be heard and determined by the Hon. E. C. Billings.

Sixth. The court erred in ordering judgment to be entered up in accordance with the verdict and despite defendant's objections, as set forth in the bill of exceptions (pp. 87, 89).

Seventh. That the judgment was not rendered or signed by the judge who presided at the trial and heard the evidence, Hon. Aleck. Boardman, but by another judge, Hon. Edward C. Billings, and that the rendition and signing of a judgment under the laws of Louisiana is a judicial act which can only be performed by the judge presiding at the trial (p. 89).

Argument.

EXCEPTIONS TO PETITION.

The gravamen of the petition is that defendant had instituted suit and provisionally seized the property of his lessees in the State court, that this seizure was wrongful; that Saloy, after the seizure, bonded the property, and took possession, and disposed of it; that the lessees were not indebted to Saloy in any sum whatsoever; that the Dragons are without means to pay their debt due him, Bloch; having

been deprived of the power of complying with their contract by Saloy, and that he, Saloy, must pay for them ; and finally that Saloy's suit and proceedings against the Dragons were in violation of the contract with Bloch.

If the plaintiff's action be considered as a suit for malicious prosecution it is clearly not maintainable, for it is nowhere averred that the suit complained of has terminated adversly to defendant Saloy, *a sine qua non* in actions of that character. (Greenleaf on Evidence, vol. 2., 452.)

Barton vs. *Kavanaugh*, 12 A., 332 ;
Murphy vs. *Redler*, 16 A., 1.

It is nowhere alleged in plaintiff's petition nor does it appear from the contract annexed thereto that defendant, Saloy, ever bound himself not to sue the Dragons for rent. In bringing this suit complained of in the State court, and in bonding the provisional seizure upon his tenants' property he was merely exercising a legal right authorized by the laws which entered into and became part of the contract between the parties. Articles 2705, 2706, 2707, and 2709, Revised Civil Code of Louisiana, define the nature and extent of the lessor's lien and privilege, and Articles 284, *et seq.*, of the Louisiana Code of Practice, provide the means of judicially enforcing the landlord's lien by the provisional seizure of the tenant's property in case of the non-payment of rent. Act No. 19, approved February 26th, 1877, provides that when "the defendant has failed to bond after the expiration of ten days from said seizure it shall be lawful for the plaintiff to give bond and security to the sheriff, as that required by law

from the defendant and to take the property provisionally seized into his possession." It has been held that the "bond of release *quoad* the seizure, takes the place of the property."

Blanchin vs. *Fashion*, 10 A., 49;
Lem vs. *Galecran*, 11 Wall., 185.

The provisions of the Louisiana Civil Code and Code of Practice relative to the landlord's privilege and the mode of enforcing the same have been several times reviewed by this court.

Holdane vs. *Sumner*, 15 Wall., 600;
Marshall vs. *Knox*, 16 Wall., 557.

It therefore follows that in instituting suit to recover his rent, provisionally seizing his tenant's property on the leased premises and releasing the same on bond, Saloy was only exercising his legal rights, and it has often been held "that even when an act authorized by law causes damage, it is *damnum absque injuria*."

> "No damage can result from a provisional seizure issued by the lessor when he has a right to the writ."
>
> *Grant* vs. *Sebastian*, 28 A., n. v.;
> See *Louque's Digest*, p. 493, [d.] No. 4.

> "No damage can be awarded for a provisional seizure which has been maintained by the judgment of the court from which it issued."
>
> *Murphy* vs. *Redler*, 16 A., 1.

At all events, the plaintiff below, defendant here, could not collaterally question the validity of the proceedings in the State court by suit in the Federal

court. His remedy was by third opposition in the suit pending in the State court under Article 395, *et seq.*, Louisiana Code of Practice, and not by resorting to a separate action in the United States Court. In this way he could have asserted any superior lien or privilege claimed by him upon the property provisionally seized (Code of Practice, Arts. 400, 401), and the court from which the writ issued could have regulated the rank of privileges in accordance with Art. 3217, Revised Civil Code of Louisiana. As soon as it was made to appear that the State court had first acquired jurisdiction over the controversy it was the duty of the Federal court, instead of attempting to exercise supervisory control over the acts of an independent tribunal, to dismiss the proceedings and refer the plaintiff to the State court for redress of his alleged grievances, in pursnance of the well recognized and established rules of judicial comity.

Peck vs. *Jenness*, 7 How., 612;
Taylor vs. *Carryl*, 20 How., 595;
Taylor vs. *Tainter*, 16 Wall, 370;
New Orleans vs. *Steamship Co.*, 20 Wall, 392;
Memphis vs. *Dean*, 8 Wall., 64.

Exceptions to the Rulings of the Court below.

Bill of Exceptions No. 1.

"Defendant's counsel request the court to charge the jury, that the contract marked Exhibit "C." made between H. B. Dragon & Bro. and Simon Bloch and B. Saloy, giving said Simon Bloch a lien and privilege on the crops grown, raised and cultivated on the Monsecours plantation, during the year 1883, having in said con-

tract been fixed and limited at the sum of fifteen thousand dollars, no other or greater amount than that stipulated could be covered by the said contract to the prejudice of B. Saloy and that said Simon Bloch, plaintiff, had and could have no lien and privilege on the crop of Monsecours plantation for the year 1883 or its proceeds as against defendant Bertrand Saloy, for more than fifteen thousand dollars, although P. B. Dragon & Bro. might be liable personally for any excess over said sum to the said Simon Bloch. That if the evidence adduced by plaintiff proved that he had received more than fifteen thousand dollars from the net proceeds of the crop of 1883 his privilege as factor was extinguished under the contract marked exhibit "C." That Simon Bloch could not have been compelled to have advanced more than fifteen thousand dollars under the contract marked exhibit "C," to P. B. Dragon & Bro., nor could he have been held responsible in damages either by Dragon & Bro. or by Bertrand Saloy for refusing to advance more than that sum, that there was no mutuality and consequently that although one promise may be a good consideration for another promise, there must be mutuality of engagement, otherwise the contract is null, in so far as there is no binding obligation as against one or the other of the contracting parties.

"But the court refused and declined to give the charge as requested above and on the contrary, in instructing the jury charged as follows: 'It is not a question whether they (*i. e.* the necessary supplies) are limited to fifteen thousand ($15,000.) dollars or not. On that point I charge you that on a fair reading of this contract they are not limited to fifteen thousand ($15,000.) dollars. A privilege is something that is not necessary for you and I to agree to. The law will fix our relations as to that. The law only requires the amount to be fixed when a third party comes

in and claims rights. Now these contracting parties need not to have said anything about privilege as to this amount, but they did limited to the amount that the factor was entitled to for all the necessary supplies furnished to Dragon & Bro. In agreeing to this matter the language, as I interpret it, permits me to say conclusively that so far as the law is concerned you are not limited in ascertaining Bloch's rights in this matter because of that fifteen thousand ($15,000) dollars and on Blotch's demand I charge you that the law applying to the agreement between Bloch, Saloy and Dragon, force you to make Saloy to stand aside, so far as he may have claims against Dragon, until Bloch has satisfied all claims whether they are over or under fifteen thousand (15,000.) dollars."

We submit that the contract "C" does not justify the interpretation placed upon it by the Judge *a quo* in the above recited charge, and if it did it would be clearly void for want of mutuality of agreement. On examining this contract we notice that a special lien is granted for the sum of fifteen thousand dollars on the crops of rice, sugar, molasses, and Bertrand Saloy intervenes in the act and "consents and agrees that his claims and demands as lessor of the aforesaid Monsecours plantation shall be subordinate and inferior in rank to the claims and privilege of said Bloch as the furnisher of supplies or for advances furnished under this contract, and that said Bloch shall be reimbursed from the crops of 1883, made on said plantation, the full amount of his advances he made without regard and in preference to the demands of said Saloy, for the rental of said plantation." It is to be remarked, that this contract was entered into with reference to the provisions of Act No. 66, approved

March 21, 1874, (see acts of Louisiana, p. 114) which provided that the "right of pledge of furnishers of supplies should be subordinate to the claim of the laborers for wages and for the rent of the land on which the crop was produced," and it was for the purpose of obtaining the landlord's waiver of his lien in favor of the furnisher of supplies that Saloy was required to intervene in the contract. The act 66 of 1874, permitted planters, farmers and others to thus pledge and pawn, cotton, sugar and other agricultural products to merchants, factors and others. By the Code it was necessary that the act of pledge "should mention the amount of the debt" (Rev. Civil Code Art. ~~2108,~~) and this requirement was not abolished by the act of 1874. In interpreting the provisions of this act of 1874, p. 114, the Supreme court of Louisiana says that "contracts made with factors to give them a privilege or pledge on crops, must stipulate the sum to be secured by such privilege or pledge, and no further than that thus stipulated and fixed can be covered by such contracts to the prejudice of other creditors." *Gay & Co.* vs. *Pike*, 30 A. 1332.

Again, Bloch could not have been compelled to advance over fifteen thousand dollars under the contract with the Dragon brothers, nor could he have been held responsible in damages for refusing to advance more than that sum. There was no mutuality, and it has been held that "one promise may be a good consideration for another promise, but there must be mutuality of agreement, otherwise the contract is null, in so far as there is no binding obligation as against one or either of the contracting parties."

Campbell vs. *Lambert*. 36 A. p. 35.
Rev. Civil Code Arts. 2034 & 2035.

Bill of Exceptions No. 2.

"Defendant's counsel requested the court to charge the jury that Bloch, the factor, had a privilege on the crops or their proceeds for the year 1883, only for such necessary supplies and money as were advanced and used for the purpose of cultivating and harvesting the crops for said year on said plantation; that it was incumbent on plaintiff to show that all the articles charged for and monies advanced were necessary supplies, and money furnished and advanced for the purpose of making and gathering the crops of the said year 1883. That plaintiff Simon Bloch had no lien on the crops for the supplies he had furnished and advanced for the support and maintenance of the families of P. B. and Athenase Dragon, as said items could not be considered necessary supplies under the law of Louisiana, for which a lien and privilege is granted to the factor. But the court refused to give the charge as requested above, but, on the contrary, in instructing the jury, charged, as follows:—That the presumption is that they the Dragon brothers are entitled to the eighteen hundred ($1800.) dollars charged on Bloch's account for necessary supplies for themselves and families. If you think that nine hundred ($900) dollars for each for necessary supplies was advanced, you will allow that item of Bloch's account or such part of it as may be for necessary supplies."

Evidently the sum required for the support and maintenance of the planter's family are not necessary supplies, and the law only allows the factor a privilege for supplies necessary to cultivate and gather the crop.

"A privilege is only given on the growing crop of the year for such necessary supplies as are used in producing it."

Wallace vs. *Urquhart*. 23 A. 469.

"Where the articles furnished are not necessary supplies the law allows no privilege."

Stafford vs. *Pearson & Williams*. 25 A. 658.

Bill of Exceptions No. 3.

"Defendant's Counsel requested the Court to charge the jury that the contract Exhibit "C," annexed to bill of exceptions No. 1, does not contain any stipulation by which defendant bound himself to refrain from suing for his rent, and that the waiver of a legal right is not to be presumed; that the judgment obtained by B. Saloy not being attacked for fraud or collusion, is *prima facie* evidence of the claim and privilege of the former; that said P. B. Dragon & Bro. having failed to pay their rent when the same fell due, the plaintiff was authorized to sue and provisionally seize; that the seed cane was immovable by destination; that the privilege of Bloch, factor, did not cover the seed cane or its proceeds; that Dragon the tenant had no more right to grind the seed cane and ship the sugar and molasses produced therefrom to Bloch the factor, for sale, than he had to ship and sell the mules, which were also immovable by destination; that the plantation was leased for a sugar-plantation, and the seed cane formed part of the plantation; that it was a violation of the lease for the tenant to destroy or make away with the seed cane; that the lessee's right was to enjoy the thing leased according to the use for which it was intended; that in seizing and selling the sugar and molasses produced from the seed cane, Saloy, the defendant, was only getting the proceeds of his own property, and doing no injury to Bloch, factor.

"The court refused and declined to give the charges as requested above, but, on the contrary, charged: 'Now as to this suit of Saloy being wrongful or not I will charge you that it is wrongful so far as it may injure Bloch because the allegations in his petition in the suit No. State court (and they must stand by them), do not set up fraud between Bloch and Dragon. They do not set up a conspiracy to injure, and unless you find the fraud proved and the conspiracy to injure, you would be warranted in concluding that in the mind and purpose of Saloy these allegations represented every thing in existence at that time. I do not shut you out in going in to subsequent matters, for whilst Saloy did not bargain away his right to sue Dragon he did say 'If I should sue Dragon, no injury will come to you, Bloch, and the law forbids him not to bring an action against Dragon, but to adopt a remedy which may cause injury to Bloch's rights under the contract between the three parties named in the agreement, Saloy, Dragon and Bloch. The landlord, Saloy, gave up his right to sue Dragon, in any way to injure Bloch's rights, unless Dragon and Bloch did something or were doing something to injure or defraud Saloy. It was contended by counsel for the defendant that under that five year lease Dragon was to leave so many acres of seed cane and so many acres of stubble; that as he was not leaving that amount at the end of the year, Saloy had the right to consider that lease broken and to proceed by a seizure to secure himself. It was one of the important features of the lease that there should be so much cane left at the end of the year 1883, and that Dragon should leave the seed cane, that if he did not do so the lease would be broken. This is the position taken by defendant's counsel, but you will not be troubled about that when I read this sentence from the act, 'It is fully understood and agreed that the

amount of seed cane to be put down for next year's crop shall be fixed and determined by said mortagee.' I say that that relieves me from all the anxiety I had upon the matter as to the law relied upon by defendant's counsel. That provision modifies the lease between Dragon and Saloy so that it does not effect Bloch in this case. When Saloy agreed to the insertion of that article in the agreement he said to Bloch, 'I waive this portion of the lease which requires Dragon to leave so much cane for the year 1883, and so far as Messrs. Saloy, Bloch and Dragon are concerned, they are all bound by it. Bloch considered it fit that the cane should be put into the crucible and made sugar of, and he had the right to do so. It was so nominated in the bond."

The contract does not contain any stipulation by which Saloy bound himself to refrain from suing for his rent, and the waiver of a legal right is not to be presumed. *Nemo facile præsumitur donare.*

The judgment obtained by Saloy against the Dragons, not being attacked for fraud or collusion, is *prima facie* evidence of the claim and privilege of the former even against third persons.

Gleason & McManas vs. *Sheriff*, 19 A., 143;
Gleason & McManus vs. *Sheriff*, 20 A., 266.

The Dragons having failed to pay their rent when the same fell due, Saloy was authorized to sue and justified in provisionally seizing the movables subject to his lien.

"The lessees' failure to pay rent authorizes an affidavit of good reason to believe that the property will be removed from the premises."

Heirs of Lalaurie vs. *Woods*, 7 A., p. 366;
Wallace vs. *Smith*, 8 A., 374.

The seed cane was immovable by destination. (Rev. Civil Code, Art. 468.) The privilege of Bloch, the factor, did not cover the seed cane. *Citizens' Bank* vs. *Wiltz*, 31 A., 244. The tenants had no more right to grind the seed cane and ship the sugar and molasses produced therefrom to Bloch for sale, than they did to ship and sell the mules and farming implements which are likewise immovables by destination. The plantation was leased for a sugar plantation and the seed cane formed a part of the plantation. The seed cane was the property of Saloy the lessor and owner of the soil, and not of the tenant farmers, Dragon and brother, to whom Bloch made advances and furnished supplies. It was a violation of the lease for the tenants to destroy and make away with the seed cane. The lessees' right was to enjoy the thing leased according to the use for which it was intended. (Rev. Civil Code., Arts. 2710 and 2711.) In seizing and selling the sugar and molasses produced from the seed cane Saloy was only getting the proceeds of his own property, and not the proceeds of any property belonging to the tenants of his plantation. But we are told that the contract stipulates that "it is further distinctly understood and agreed that the quantity of seed cane to be put down for the next year's crop shall be fixed and determined by the mortgagee, and that no more shall be put down than he may allow." To this we reply there was no evidence introduced tending to show that Bloch ever fixed or determined the amount of seed cane to be put down for next year's crop. The contract sued upon is not a mortgage, for "A chattel mortgage is unknown to Louisiana law and cannot be enforced there." *Delop & Co.*, vs. *Windsor & Randolph*, 26 A., 185.

The form used by the notary in preparing the contract was evidently a blank in vogue where the planter obtaining the advances from the merchant was the owner, and not the tenant of the plantation to which the supplies were to be furnished. Saloy merely waived his prior rights and privileges on Dragons' property in favor of Block, he did not convey to Bloch any seed-cane or other appurtenance of his plantation, or give any lien thereon.

Fifth Assignment of Error.

The trial Judge, Hon. Aleck Boarman, had no authority to continue defendant's motion for a new trial to a subsequent term, and refer it for decision to the Hon. Edward C. Billings. See order of July 3rd, 1885. (pp. 20, 21). This order was made in direct violation of two Articles of the Louisiana Code of Practice, in the Chapter relating to New trials. Article 558 of the Code of Practice expressly provides "that said new trial shall be prayed for and passed upon before the adjournment of court," and Article 546 of the same Code requires "the judge to sign all definitive judgments rendered by him," and directs that "all motions for new trials in causes shall be made and determined, and all final judgments signed before the adjournment of the court for the term at which such causes were tried." A mere reference to the law shows the violation complained of.

Sixth Assignment of Error.

The court erred in ordering judgment to be entered up in accordance with the verdict, because the jury

failed to pass upon the defendant's reconventional demand. The bill of exceptions set out the evidence tending to establish the defendant's reconventional demand up to the sum of six thousand three hundred and sixty-seven ($6,367) dollars, and the judge's charge to the jury on this claim in reconvention, and recites that after the jury had returned "into court and rendered their verdict, plaintiff's counsel moved the court to enter up judgment upon said verdict as rendered by the jury [in accordance therewith] and thereupon defendant, through his counsel, then and there objected for the reason that the jury had failed to act upon defendant's reconventional demand, and because the said verdict is not responsive to the issues involved, *and is informal and defective* in that it *fails* to pass upon defendant's reconventional demand; but the court granted the motion made by plaintiff's counsel, notwithstanding defendant's objections, ordered the judgment to be entered up as rendered, because the court considered that the jury in its verdict passed upon both the original and reconventional demands." The verdict of the jury is fatally defective, whether it be tested by the provisions of the Louisiana Code of Practice or the rules of the common law.

> "When the jury have not rendered a distinct verdict on a claim set up by the defendant in reconvention, the case will be remanded for a new trial."
>
> *Collins* vs. *Graves*, 13 A., 95.

> "The failure of the jury to notice a reconventional demand, on which evidence is offered, is sufficient ground for a new trial."

Johnson vs. *Bagley*, 4 La., 334;
Welsh vs. *Barrow*, 9 R., 520;
Morgan vs. *Driggs*, 17 La., 184.

But in the case of *Parks* vs. *Turner*, 12 How., 39, this Court held that "the sufficiency of the verdict must be judged by the rules of the common law and the statutes of the United States, and not by the laws of Louisiana;" and by the common law, the verdict is bad if it varies from the issue in a substantial matter, or if it find only a part of that which is in issue," to borrow the language of this Court in *Patterson* vs. *U. S.*, 2 Wh., 225.

Seventh Assignment of Error.

The judgment was not rendered or signed by the Hon. Aleck. Boarman, who presided at the trial, and heard the evidence, but by the Hon. Edward C. Billings, to whom the motion for a new trial was referred for determination. In the Succession of Asbridge, 1 An., 206, the Supreme Court of Louisiana say:

> "We incline to the opinion that the signing of a judgment, as prescribed by our Code of Practice, is not a mere ministerial act. We believe that the delay prescribed between the rendition and the signing of a judgment, was prescribed in order to give the mind of the judge time and leisure for reflection; that if erroneous, he might order its revision by a new trial on the application of the litigants, or even *ex proprio motu;* and that the signing of the judgment is the solemn exercise and memorial of his judicial will and conviction that the judgment requires and shall undergo no change."

The court then proceeded to comment upon the decision of this Court in *Life & Fire Insurance Co. of New York* vs. *Wilson's Heirs*, 8 Peters, 291, where it appears a somewhat different conclusion was reached. This Court must therefore, it would seem, conform to a decision of the State Court construing its own statute.

Beauregard vs. *New Orleans*, 18 How., 497;
Supervisors vs. *United States*, 18 Wall., 71.

It is, therefore, respectfully asked that the judgment may be reversed.

E. HOWARD McCALEB,
WM. A. MAURY,
For Plaintiff in Error.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

BERTRAND SALOY,
Plaintiff in Error,
vs.
SIMON BLOCH.

No. 92.

Appendix to the Brief of Plaintiff in Error.

REV. CIVIL CODE OF LOUISIANA (ED. 1875).

Art. 3217: The debts which are privileged on certain movables are the following:

* * * * * * * *

3. The rents of immovables, and the wages of laborers employed in working the same, on the crops of the year, and on the furniture, which is found in the house let, or on the farm, and on everything which serves to the working of the farm.

* * * * * * * *

CODE OF PRACTICE, Louisiana (Ed. 1870).

Provisional Seizure.

ART. 284. The plaintiff may, in certain cases hereinafter provided, obtain the provisional seizure of

the property which he holds in pledge, or on which he has a privilege in order to secure the payment of his claim.

ART. 285. Provisional seizure may be ordered in the following cases:

* * * * * *

2. When a lessor prays for the seizure of furniture or property used in the house or attached to the real estate which he has leased;

Art. 287. When a lessor sues for rent, whether the same be due or not due, he may obtain the provisional seizure of such furniture or property as may be found in the house, or attached to the land, leased by him ; and in all cases it shall be sufficient to entitle a lessor to said writ to swear to the amount which he claims, whether due or not due, and that he has good reason to believe that said lessee will remove the furniture or property on which he has a lien or privilege out of the premises, and that he may be thereby deprived of his lien. * * *

Of the Opposition of Third Persons.

ART. 395. This opposition is a demand brought by a third person not originally a party in the suit, for the purpose of arresting the execution of an order of seizure or judgment rendered in such suit, or to regulate the effect of such seizure in what relates to him.

ART. 396. Such opposition may take place in two cases:

1. When the third person making the opposition pretends to be the owner of the thing which has been seized;

2. When he contends that he has a privilege on the proceeds of the thing seized and sold.

ART. 397. This opposition must be made before the court which has granted the order of seizure or the judgment in virtue of which the provisional seizure has been effected.

* * * * * *

Judgments.

Art. 546. The judge must sign all definitive or final judgments rendered by him, but he shall not do so until three judicial days have elapsed, to be computed from the day when such judgments were given; provided, that hereafter (except in the Parish of Orleans), all motions for new trials in causes shall be made and determined, and all final judgments signed before the adjournment of the court, for the term at which such causes were tried, and whether three judicial days shall have elapsed or not.

Office Supreme Court U. S.
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IN THE

Supreme Court of the United States.

October Term, 1889.

No. 92.

BERTRAND SALOY,

PLAINTIFF IN ERROR,

VS.

SIMON BLOCH.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

GEORGE A. KING,
Of Counsel for Defendant in Error.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

IN THE

Supreme Court of the United States.

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BERTRAND SALOY,
PLAINTIFF IN ERROR,
v.
SIMON BLOCH.

No. 92.

Supplemental Brief for Defendant in Error.

I.—ON THE EXCEPTIONS TO THE PETITION.

This suit is based upon the violation of an express contract entered into between Simon Bloch, Pierre B. and Athanase Dragon, and Bertrand Saloy, whereby Bloch, the plaintiff, agreed with the Dragons to furnish funds necessary for the cultivation and furnishing of necessary supplies for the Monsecours plantation, in Plaquemines parish, Louisiana, in consideration of the interest and commissions stipulated to be paid by said Dragons; to which agreement Saloy, the defendant, was a party, and waived and remitted in favor of Bloch any and all superior rights and claims that he had or might have against the plantation and the crops as the lessor or landlord

thereof, in order that the land might be cultivated and the expenses refunded to Bloch, the plaintiff.

The breach alleged of this contract is that Saloy on the 1st of December, 1883, proceeded by action before the 24th Judicial District Court in and for the parish of Plaquemines to the seizure of the buildings of the Dragons on the plantation and the growing crop, and crop in process of manufacture, put the sheriff in possession thereof, and, under an order of said Court, took possession of the property and sold the same, and converted the proceeds to his own use. That the property so taken by Saloy to his own use was, by the aforesaid contract, liable and subject to the claim and demand of the plaintiff, and that the balance due upon the advances made by the plaintiff to the Dragons had not been repaid him by them, and that they were without means to do so, owing to the illegal, unjust, and malicious conduct of Saloy, the defendant, in the seizure of the property.

It will thus be seen that the suit is not one (as seems to be apprehended on behalf of the plaintiff in error) for a malicious prosecution. It is founded upon the breach of an express contract. Neither is the validity of the proceedings before the State Court, wherein and whereby Saloy asserted his claim and privilege for rent, in any wise assailed by the plaintiff, here defendant in error. The complaint is that Saloy, having by contract agreed to stand aside and waive his superior rights and privileges as landlord until Bloch's claim should be settled, nevertheless proceeded in a manner ignoring the rights and privileges of Bloch, which he had agreed should be preferred to his own. Undoubtedly the right of provisional seizure conferred upon the landlord by the sections of the civil code of Louisiana, referred to (though not specifically set forth) in the brief of plaintiff in error, could lawfully have been

exercised by Saloy but for the fact that he had by contract disabled himself from proceeding to enforce them in disregard of the rights of Bloch, in whose favor he had agreed to waive his prior claim as lessor. It is a necessary stipulation in every contract—none the less understood, even if not expressed—that neither party shall do any act to prevent or disable the other from complying with his contract. *Van Buren* v. *Digges*, 11 How. 461; *United States* v. *Peck*, 102 U. S. 64; *United States* v. *Behan*, 110 U. S. 338. Here Saloy, by his suit against the Dragons, and his seizure of their crops, utensils, &c., as complained of in the petition, absolutely prevented and made impossible the fulfilment by the Dragons of their portion of the tripartite agreement. It was a plain and unequivocal breach of that agreement, for which Saloy was clearly liable in damages.

It is no answer to this to say that the code of practice of Louisiana permits this process of provisional seizure to be employed by a landlord against his tenant. The plain and sufficient reply is that Saloy stipulated not to employ his process. He agreed to stand aside till the claims of Bloch for his advances were satisfied.

II.—Bill of Exceptions No. 1.

The second assignment of error is that the Court below erred in charging the jury in the manner set forth in the bill of exceptions No. 1. (See Record, p. 22; brief for plaintiff in error, pp. 12, 13). The charge was, in effect, that so far as the three parties to this agreement were concerned—Bloch, Saloy, and the Dragons—Saloy was required to stand aside, so far as he may have claims against the Dragons, until Bloch has been satisfied all claims, whether they are over or under $15,000.

The complaint of this charge is that Bloch could have no lien under the terms of the contract for any supplies amounting to over $15,000. The theory of the charge, on the other hand, was that the limitation of the amount only affected the contract so far as third parties were concerned. Said the Judge, in his charge: "A privilege is something that is not necessary for you and I to agree to. The law will fix our relations as to that. The law only requires the amount to be fixed when a third party comes in and claims rights."

The correctness of this charge will, we think, clearly appear upon an examination of the statute under which the lien or privilege is claimed.

It will be found in the Laws of Louisiana of 1874, p. 114. We quote the title and first section, being the only portions material in this case:

"AN ACT to enable planters, farmers, merchants, traders, and others to pledge and pawn cotton, sugar, and other agricultural products to merchants, factors, and others, and to confer a pledge by the transmission of a bill of lading or carrier's receipt by mail or by the carrier.

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That, in addition to the privilege now conferred by law, any planter or farmer may pledge or pawn his growing crop of cotton, sugar, or other agricultural products for advances in money, goods, and necessary supplies that he may require for the production of the same by entering into a written agreement to pledge the same and having the agreement recorded in the office of the recorder of mortgages of the parish where said cotton, sugar, or other agricultural product is produced, which recorded contract shall give and confer on the merchant or other person advancing money, goods, and necessary supplies for the production of the said agricultural product a right of pledge upon the said crop, the same as if the said crop had been in the possession of the pledgee: *Provided,*

That the right of pledge thus conferred shall be subordinate to that of the claim of the laborers for wages and for the rent of the land on which the crop was produced."

This act was in amendment of Article 3217 of the Civil Code, which, so far as material herein, is as follows:

"ART. 3217. The debts which are privileged on certain movables are the following:

"1. The appointments or salaries of the overseer for the current year, on the crops of the year and the proceeds thereof; debts due for necessary supplies furnished to any farm or plantation, and debts due for money actually advanced and used for the purchase of necessary supplies and the payment of necessary expenses for any farm or plantation, on the crops of the year and the proceeds thereof.

"2. The debt of a workman or artisan, for the price of his labor, on the movable which he has repaired or made, if the thing continues still in his possession.

"3. The rents of immovables and the wages of laborers employed in working the same, on the crops of the year, and on the furniture, which is found in the house let, or on the farm, and on everything which serves to the working of the farm.

* * * * * * * *

"The privileges hereinbefore granted to the overseer, the laborers, the furnishers of supplies, and the party advancing money necessary to carry on any farm or plantation, shall be concurrent, and shall not be divested by any prior mortgage, whether conventional, legal, or judicial, or by any seizure and sale of the land while the crop is on it.

"The privileges granted by this article on the growing crop in favor of the classes of persons mentioned shall be concurrent, except the privilege in favor of the laborer, which shall be ranked as the first privilege on the crop."

See, too, Articles 3157 and 3158 of the Civil Code, as follows:

"ART. 3157. The pawn invests the creditor with the right of causing his debt to be satisfied by privilege and in preference to the other creditors of his debtor out of the product of the movable, corporeal, or incorporeal, which has been thus burdened.

"ART. 3158. But this privilege shall take place against third persons only in case the pawn is proved by an act made either in a public form or under private signature: *Provided*, such act has been recorded in the manner required by law: *Provided*, also, that whatever may be in the form of the act, it mentions the amount of the debt, as well as the species and nature of the thing given in pledge, or as a statement annexed thereto of its number, weight, and measure."

The decisions of the Supreme Court of Louisiana show that the specification of the amount intended to be secured is intended only for notification to third persons, not as restrictive of the contract as between the parties thereto, thus fully justifying the language of the learned Judge in the Court below: "The law only requires the amount to be fixed when a third party comes in and claims rights." *Gay* v. *Pike*, 30 La. Ann. 1332, 1336; *Laloire* v. *Wiltz*, 31 La. Ann. 436. The privilege resulted from the very fact of the advance of money under the agreement, and was not as between the parties limited in amount by the sum named in the contract, which was inserted therein merely to satisfy the provision of law requiring the specification of the amount for the information of third parties. As the learned Judge remarked in his charge, page 22: "A privilege is something that it is not necessary for you and I to agree to. The law will fix our relations as to that." Or, as is put by the Supreme Court of Louisiana, "A privilege cannot be created by convention between the parties—it must derive its existence from the nature of the contract and from the law ap-

plicable thereto." *Citizens' Bank* v. *Maureau*, 37 La. Ann. 857, 861.

An examination of the contract in all its parts will demonstrate conclusively that this is the only view that can be taken of it without doing violence to its evident spirit and intent.

It will be seen, upon an analysis of the instrument, that the limit of $15,000 plays but a very subordinate part, and was probably only inserted for the purpose of formal compliance with Section 3158 of the Civil Code, as above cited, and in order to give notice to third parties. The provisions as to shipping the entire crop to Bloch, together with the absolute waiver by Saloy of his privilege or higher rank as lessor of the plantation, show that, as between the parties, the contract was intended to cover all advances, whether over or under $15,000, as was held by the learned trial Judge. *Bell* v. *Radcliff*, 32 Ark. 645.

We insist, however, that, under the terms of the contract, the amount of $15,000 named therein, even if restrictive as between the parties, cannot be regarded as a limitation upon the aggregate of all advances made during the entire year, but only of the balance due at any one particular time; in other words, that a portion of the advances being from time to time refunded, they stood as if they had never been, and the contract of pledge remained as a continuing security available to cover any balance up to and including $15,000, even though, taken altogether, the aggregate of advances throughout the year may have exceeded that sum.

Such is the universal rule in the construction of mortgages for future advances. *Lawrence* v. *Tucker*, 23 How. 14; *Jones* v. *Guaranty and Indemnity Co.*, 101 U. S. 622; *National Bank* v. *Whitney*, 103 U. S. 99; *Shores* v. *Doherty*, 65 Wis. 153, 157; *Bank of Utica* v. *Finch*, 3 Barb. Ch.

293 ; *Murray* v. *Barney*, 34 Barb. 336, 348 ; *Foster* v. *Reynolds*, 38 Mo. 553, 556, 557 ; *Collins* v. *Carlile*, 13 Ill. 254.

And, in Louisiana, by the Civil Code—

"ART. 3292. A mortgage may be given for an obligation which has not yet risen into existence, as when a man grants a mortgage, by way of security for indorsements, which another promises to make for him."

And see *Pickersgill* v. *Brown*, 7 La. Ann. 297, 308–311.

The same rule has been frequently applied to contracts of guaranty, which are always regarded as continuing in their character where the language of the instrument does not imperatively demand an opposite construction. *Douglass* v. *Reynolds*, 7 Pet. 113 ; *Mason* v. *Pritchard*, 12 East. 227.

How much more does this principle apply in a case like the present, where, the advances having once begun, the pledgee must continue to advance, or lose all he has invested! The fair construction of the instrument before the Court necessarily is that it is to secure any balance not exceeding $15,000. As the amount demanded in this suit was but $6,266.23, and that actually recovered was but $3,812.30, less $312.30 allowed the defendant in reconvention, the demand is far within the limit covered by the contract of pledge.

The very fact that the advances actually made aggregated $24,433.44 (p. 38), besides the $7,500 notes, and the interest on ~~both advances and~~ notes, shows the contemporaneous understanding of the parties.

Besides, Bloch, as creditor of the Dragons, had the right to apply their payments to the later items of the account (in the absence of any instructions to the contrary from them); and the record (p. 38) shows he did so, thus leav-

ing the security in force as to the earlier items. *National Bank of the Commonwealth* v. *Mechanics' National Bank*, 94 U. S. 437, 439.

Nor does Saloy's answer (pp. 6–10) rely upon the excess of the $15,000 limit. That objection appears for the first time in the bill of exceptions.

III.—Bill of Exceptions No. 2.

The charge herein excepted to was that the presumption is that the Dragons are entitled to $1,800 charged in Bloch's account for necessary supplies for themselves and families. "If you think that $900 for each for necessary supplies was advanced, you will allow that item of Bloch's account, or such part of it as may be for necessary supplies." (Record, p. 29.) Evidently the question was, after all, rather one of fact than of law, and was fairly put to the jury. The case of *Hollander* v. *His Creditors*, 6 La. Ann. 668, *Stafford* v. *Pearson*, 26 La. Ann. 658, and *Laloire* v. *Wiltz*, 31 La. Ann. 439, are conclusive as to the correctness of the charge in point of law.

IV.—Bill of Exceptions No. 3.

The portion of the charge excepted to consists of two distinct points.

1. That Saloy's suit against the Dragons and seizure of the property was wrongful unless some fraud or collusion between Bloch and the Dragons was set up and established, and that for bringing the same he is responsible in damages.

2. That under that portion of the agreement (p. 26) that the amount of seed-cane to be put down for the next year's crop was to be fixed and determined by the mortgagee

(Bloch), he had the right to require the seed-cane, or so much thereof as he thought proper, to be taken up and manufactured into sugar, notwithstanding the previously existing lease of the property to the Dragons required them (pp. 45, 46) to leave a certain amount of it from year to year.

The former of these points has been above discussed in our remarks on the exceptions to the petition. See Saloy's petition in his suit against the Dragons, pp. 48–50 of the record, which, although in other respects exceedingly circumstantial in its averments, singularly ignores all reference to the claims or rights of Bloch, to which Saloy had agreed that his own should be subordinated. The bill of exceptions contains no evidence whatever that Bloch had any notice of the suit of Saloy against the Dragons. True, it is alleged by Saloy, in his answer to the petition in the present case, pp. 6–10, that Bloch had notice; but no evidence of that fact is offered, which was clearly necessary on the part of Saloy in order to put Bloch in the position of being in default in not intervening in that suit. The allegations of the answer as to notice of the suit must be regarded as denied by the plaintiff, Bloch, under Article 329 of the Code of Practice of Louisiana, which provides that "When the defendant, in his answer, alleges on his part new facts, these shall be considered as denied by the plaintiff; therefore neither replication nor rejoinder shall be admitted."

Evidently the seizure for rent and the necessary incidental demoralization to the cultivation of the crop, as complained of in the petition, pp. 2, 3, of record, constitute a material impairment of Bloch's security for his advances, which Saloy had by solemn contract guaranteed as superior to his own claims.

As to the remaining part of this charge complained of,

it is impossible to state the case more clearly than it was put by the learned trial Judge. *Citizens' Bank* v. *Wiltz*, 31 La. Ann. 244, is no authority for plaintiff in error, there having been in that case no express contract as to the seed-cane. Here the seed-cane was expressly provided for in the contract. *Expressum facit cessare tacitum.*

V.—The Motion for New Trial.

It is next assigned for error that the trial Judge, Hon. Aleck Boarman, had no authority to continue defendant's motion for a new trial to a subsequent term and refer it for decision to Hon. Edward C. Billings, as he did by order of July 3, 1885, pp. 20, 21, because the Code of Practice of Louisiana requires such motions to be passed upon before the adjournment of court for the term, and (as is insisted) by the same Judge who tried the case, though as to the latter point the articles of the code cited by learned counsel for plaintiff in error hardly seem to justify his construction of them. It is difficult to perceive what advantage would accrue to the plaintiff in error by the application of these articles of the Louisiana code. If they apply to the case, it follows to a demonstration that the motion for a new trial fell to the ground with the lapse of the term at which it was made. *Goddard* v. *Ordway*, 101 U. S. 745, 751. But the articles of the Code of Practice have and can have no application. They refer not to matters of procedure or practice, but to the judicial powers of the Court, which can never be controlled by State statutes. *Nudd* v. *Burrows*, 91 U. S. 426.

VI.—Alleged Informality of Verdict.

The next assignment of error is that the verdict of the jury was so informal as not to justify the entry of judg-

ment thereon against the objection of the defendant. The verdict was in these words, p. 19:

"We, the jury, find in favor of plaintiff in the sum of thirty-eight hundred and twelve and $\frac{30}{100}$ dollars, less three hundred and twelve and $\frac{30}{100}$ dollars, for one hundred sacks rice from St. Sophie plantation.

"$3,812.30
"Less 312.30

"$3,500.00
"New Orleans, June 22, 1885."

Clearly this verdict, by its very terms, passed upon both the original and reconventional demands. Even had it been a general verdict for $3,500, without specification of items, it would have been quite sufficient within the rule of *Parks* v. *Turner*, 12 How. 39, while as it was it fully met the requirements of all the Louisiana cases cited on behalf of plaintiff in error. We understand this Court to have so held in passing upon the motion to dismiss or affirm in this case. *Saloy* v. *Bloch*, 122 U. S. 646.

VII.—Signature of Judgment.

The seventh and last assignment of error is that the judgment was not rendered or signed by Hon. Aleck Boarman, who presided at the trial and heard the evidence, but by Hon. Edward C. Billings, to whom was referred the motion for new trial, in contravention, as is alleged, of the practice of the State Courts of Louisiana. The State practice does not clearly appear to be as claimed, and it seems to be conceded that the case of *Life and Fire Insurance Company* .v *Wilson's Heirs*, 8 Pet. 291, is an authority against this assignment of error. The point, we think, will hardly be insisted on by counsel, and we for-

bear comment upon it further than to remind the Court that Judge Boarman, who presided at the trial, was not the Judge of the Eastern but of the Western District of Louisiana, and could, therefore, have only been holding the Court by virtue of a special designation under sections 591–596 of the Revised Statutes of the United States. Judge Billings, by whom the motion for new trial was determined, and who signed the judgment, is the regular Judge of the Eastern District of Louisiana.

On the whole case, it is submitted that no error is shown in any of the rulings complained of, and that the judgment should be affirmed.

GEORGE A. KING,
Of Counsel for Defendant in Error.

Supreme Court, U. S.
FILED.
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In the Supreme Court of the United States.

October Term, 1889.

No. 92.

BERTRAND SALOY *vs.* SIMON BLOCH.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for Simon Bloch, Defendant in Error.

WILLIAM S. BENEDICT,
CHARLES W. HORNOR,
Attorneys for Defendant in Error.

In the Supreme Court of the United States.

October Term, 1870.

No. 92.

BERTRAND SLOCUM vs. SIMON BLOCH.

ORDER TO SHOW CAUSE WHY A WRIT OF ERROR SHOULD NOT ISSUE.

Brief for Simon Bloch, Defendant in Error.

In the Supreme Court of the United States.

October Term, 1889.

No. 92.

BERTRAND SALOY *vs.* SIMON BLOCH.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for Simon Bloch, Defendant in Error.

The plaintiff below, Simon Bloch, brought this suit against the defendant below, Bertrand Saloy, to recover damages, over $6,266.23, interest and costs, on the grounds following:

January 26, 1883.—Petitioner, Bloch, entered into a contract to furnish funds necessary for the cultivating and furnishing of necessary supplies during 1883 to P. B. & A. Dragon for the "Monsecours" plantation, parish of Plaquemine, Louisiana. Bertrand Saloy was the lessor of the plantation to the Dragons, and he intervened and became a party to the authentic act, evidencing this contract of advancements for the purposes of cultivation, and bound himself to carry out the terms and conditions thereof, and did waive and remit in favor of Bloch any and all superior rights and claims that he had or might have against said plantation, etc., and the crop to be raised thereon, as the lessor thereof, to the end that said land might be cultivated, the advances for cultivation, the gathering and marketing of the crop, be refunded Bloch, and the balance, after deducting of all due and legal claims, charges, and expenses due by said landlord to the said Dragons, should be paid over to Saloy.

December 1, 1883.—In violation of said contract, Saloy proceeded by suit to seize the buildings and growing crops on said plantation, as well as the crop in process of manufacture, of a value exceeding plaintiff's claim, and placed the sheriff in possession, by reason whereof plaintiff was damaged in a sum exceeding said sum hereinbefore set forth; that, so acting illegally and in violation of his contract aforesaid, the said Saloy did thereafter and in said suit obtain an order from the court, in which he had obtained the writs as aforesaid, authorizing him to bond the said property so seized as aforesaid; did illegally take

possession thereof, did sell the same, and convert the proceeds thereof to his own use as aforesaid, without payment of the amount due to your petitioner, as hereinbefore set forth, being the balance due on the advances made by him to the Dragons under the aforesaid contract, which balance fully appears by and through the annexed detailed and specified account thereof, together with the two notes identified with the said act and account, to which the said Bertrand Saloy was a party as aforesaid, made part of this petition. The averments then are that at the date of Saloy's seizure there was no indebtedness of the Dragons due to Saloy; that the property thus seized and converted by Saloy was by his contract subject to plaintiff's claim as aforesaid, being balance due upon the advances made under said contract, which had not been repaid to him either by the Dragons, who are without means, or the said Saloy; that the said acts of Saloy are illegal, unjust, and malicious; that, by having incurred the expenses incident to the stoppage of his business of the said plantation, the demoralization of the hands employed thereon, his removal of said crop and the machinery wherewith to make the same from said plantation, he deprived the said Dragons of all power to comply with their contract with plaintiff, and has damaged plaintiff in a sum far exceeding the sum so due by said Dragons as aforesaid, and is responsible to plaintiff, under and by reason of the premises, in the amount so due and set forth in said account current and said notes referred to, and the same is hereby claimed of the said Bertrand Saloy.

(Record, pp. 1, 2, and 3.)

Wherefore judgment is prayed against him for the sum claimed.

Saloy appeared and excepted to this action on the following grounds, viz: 1, no cause of action; 2, prematurity of suit in this—that, until plaintiff had a judgment against the Dragons, he could not sue Saloy; 3, *res judicata* from the suit of Saloy *vs.* Dragons, that this judgment could not be attacked collaterally, and the court was without jurisdiction to annul it; 4, that Bloch had no right of action on the bond for release of the property in that suit cannot be enforced in such a suit as the present; 5, and filing the record of that suit, claims it as conclusive and *res adjudicata* as to the writ of provisional seizure and legality of the privilege therein asserted. (Rec., p. 4.) And after the court had overruled them, and ten days allowed for filing answer, issue was joined December 17, 1884, by a plea of the general denial.

Then a special denial that defendant's suit against the Dragons was a violation of his contract with Bloch, or that his acts were injurious to him or illegal or malicious, but, on the contrary, plaintiff expressly and impliedly approved and ratified respondent's acts and proceedings in said suit, furnished the sheriff with funds for cultivating the plantation, etc., after the same was provisionally seized, and subsequently received from

the sheriff the amounts so advanced by him, which were paid by respondent, and having received a portion of the benefits and fruits of said suit, is now estopped from contesting the legality and validity of the proceedings.

Then follows a plea in reconvention composed of two items of rent of the Monsecours plantation and the St. Sophia tract; the first item, $6,017, balance of rent due by the Dragons, for which he had obtained judgment, with privilege as lessor against them in the State court, after deducting the property on the plantation, seized and sold by him as landlord. Saloy reconvenes for this sum against Bloch on the allegation that over and above his advances, $12,000, he had received more than $7,000 in his hands, proceeds of said crops. The second item, $350, is claimed as the rental value of 350 sacks rice of the St. Sophia tract.

See Rec., p. 6 to p. 10 for this plea in reconvention.

On these issues the parties went to trial. The verdict (Rec., p. 19, New Orleans, June 22, 1885), reads: "We, the jury, find in favor of the plaintiff in the sum of $3,812.30, less $312.30, for one hundred sacks of rice from St. Sophia plantation;" and the judgment (Rec., p. 89, rendered June 23, 1885, signed June 8, 1886) is in exact accord with the verdict.

There were several bills of exceptions. No. 1, Rec., p. 21, presents for solution the question, Whether the authentic act (Rec., p. 22) from the Dragons to Bloch recognizing "*a special lien and mortgage or privilege*" to secure payment of advances made and to be made for the full sum of $15,000, could cover a total amount of advances made during the running of the contract, which in the aggregate exceeded $15,000? In other words, Was this limitation restrictive of any aggregate of advances over $15,000 for the year 1883? And if, as in fact was the case, the total advances made by Bloch amounted to a larger sum, then, if Bloch received more than $15,000 in the proceeds of the crop, his privilege and mortgage was extinguished for the remainder of his advances, so far as Saloy was concerned. That as Bloch could not have been compelled to advance more than $15,000 or be held responsible for refusing to advance more than that sum, there was no mutuality, and without this mutuality the contract is null. This the court declined to give, but charged: "It is not "a question whether, i. e., the necessary supplies are limited to "$15,000 or not. * * * In agreeing to this matter, the lan- "guage, as I interpret it, permits me to say conclusively, that so "far as the law is concerned, you are not limited in ascertaining "Bloch's rights in this matter because of that $15,000, and on "Bloch's demand I charge you that the law apply to the agree- "ment between Saloy, Bloch, and Dragon forces you to make "Saloy stand aside, so far as he may have claims against Dragon, "until Bloch has been satisfied all claims, whether they are over

"or under $15,000." The exception is to the refusal to charge as requested, and to the charge as given.

The 3217 Art. of the Code (1870) giving the *privilege* on the crops of the year and the proceeds thereof "for debts due for necessary "supplies furnished to any farm or plantation, and debts due for "money actually advanced and used for the purchase of necessary "supplies and the payment of necessary expenses" as between the parties, exists without recording. Ib., 3293, 3294. As a "mort-"gage for an obligation not yet risen into existence," the notarial act under consideration is not affected in any way by the limitation of $15,000. This amount is stated as an absolute debt, for which "*a special lien and mortgage or privilege is hereby granted;*" but the collateral and qualifying agreement is also set out, and manifestly cotemporaneously recorded. The whole intention of the contract would be overlooked by any other interpretation than the one given by the court.

Shirras *vs.* Craig, 7 Cranch, 34.

Wood *vs.* Weimar, 104 U. S. 793.

The authentic act might be null without a statement of some amount of money it was intended to secure. But as between the planter and the factor the privilege exists for all amounts actually advanced, and it is quite clear that, whilst the crop is growing, and that after that, whilst it is being manufactured and in transitu to a market and a sale, it is incurring an uncertain but a very regular and daily expense. Change is impressed on everything, but specially on a growing crop of sugar or rice, from the time it is planted to the very moment it is converted into money. There is no need of any legal obligation on the part of the factor to advance more than the amount mentioned in the act; *the duty is self-imposed.* After beginning with $7,500, he is bound to keep on, in self-defense. The necessity of a sudden outlay in cash, from storm, crevasse, overflow, any *force majeure*, falls on the factor, and he cannot hold his hand and stop his advances, unless fully justified by all the surrounding circumstances of the case. The growing crop is a *quasi* pledge for the security of the advances, and in this case the factor holds the entire crop by the terms of the act, "*pledged and pawned unto*" him. (Rec., p. 238.)

The reasoning is almost identically in the line of decision in Viterbo *vs.* Fredlander, 120 U. S., 707.

In the present case the owner of the plantation joins in the *quasi* pledge. Now, "over the products of the estate [this very crop] the right of the lessor is of a higher nature than mere privilege." (La. Code, 3218; Marshall *vs.* Knox, 16 Wall., 551.)

This privilege the lessor has waived expressly. Until Bloch is paid "the full amount of his advances" the lessor has no claim. "The full amount" is not $15,000, but an amount, whether "over or under $15,000." There is no error whatever here. The language of the contract, so far as the renunciation of Saloy is con-

cerned, admits of no other interpretation. But the thing here is not at all a mortgage, as it is called in the authentic act. It is a *privilege* granted by law upon a *particular movable; i. e.* a growing crop and its proceeds. (See C. N., 548, 2102; La. Code, 501, 3217, par. 1.)

II.

Bill of exceptions No. 2 (Rec., p. 29) is taken to the refusal of the judge to charge, as requested, that Simon Bloch had no lien on the crops for the supplies he had furnished and advanced for the support and maintenance of the families of P. B. & A. Dragon, as said items could not be considered necessary supplies, under the law of Louisiana, for which a lien and privilege is granted to the factor. And also to the charge as given on this point: "That the presumption is they, the Dragon Brothers, are entitled "to $1,800, charged in Bloch's account for necessary supplies for "themselves and family. If you think that $900 for each for nec- "essary supplies was advanced, you will allow that item of Bloch's "account, or such part of it as may be for necessary supplies."

This is a correct charge in all respects. The jury were the proper judges as to the amount to be allowed for necessary supplies. They have decided that nine hundred dollars was the proper amount to be allowed each of the Dragons. It nowhere appears that this amount embraces cogniacs, annisette, cigars, or ice, etc. (Hollander *vs.* His Creditors, 6th La. An., 668), or tobacco, pipes, whiskey, cards, perfumery, etc. (Stafford *vs.* Pearson, 26 La. An., 658.) *In contractibus tacite veniunt ea, quæ sunt moris et consuetudinis.* (L. C., 1964; C. N., 1135.)

By the act of 1874, p. 114, "it is as plain as words can make "it that the privilege which formerly was made to depend not "only on the advance of the money, but also for its actual use "for necessary purposes, is now caused to result from the advance "of the money, goods, and necessary supplies that may be required "by the planter. * * * Until their *prima-facie* case was de- "stroyed by proof that they had knowingly advanced the money "or supplies for other than the purposes allowed by the act of "1874," they "were entitled to their pledge."

Laloire *vs.* Wiltz, 31 La. An., 439.

III.

The bill of exceptions No. 3 (Rec., p. 40) involves two questions:

1. Was Saloy's suit for his rent against the Dragons a violation of his agreement that his claims and demands as lessor "shall be subordinate and inferior in rank to the claims and privileges of supplies or for advances furnished," * * * "and that said "Bloch shall be reimbursed it from the crops of 1883, made on "said place, the full amount of his advances hereunder, without

"regard and in preference to the demands of said Saloy, for the "rental of said plantation; provided," etc. (Rec., p. 27.)

2. Was it a violation of the lease for the tenant to destroy or make away with the seed cane; or, in other words, was Saloy, in seizing and selling the sugar and molasses produced from the seed-cane, only getting the proceeds of his own property, and doing no injury to Bloch, the factor?

The facts involved in the solution of these questions are as follows:

January 26, 1883, the contract for advances was made between Bloch and Dragon, to which B. Saloy was a party, for the cultivation of Saloy's plantation for that year, 1883. (Rec., p. 22.)

The advances began on that date and continued down to February 12, 1884. The last sale of produce December 22, 1883. (See Rec., pp. 30, 31, 32, 33, 34, 35, 36, 37, 38, 39.

November 27, 1883, Saloy sued the Dragons for his rent and obtained a provisional seizure, and sold all the crops upon said plantation, with other movables. Writ and return on record, p. 58. All these went into the possession of Saloy, under an order of the court of January 4, 1884, "a bond of release having been given according to law," and were converted by him to his own use, he claiming the legal right so to do, as set forth in the bill of exceptions under review. (Rec., pp. 58 and 40.)

Under these circumstances the suit for rent, accompanied by a provisional seizure of the property already pledged to Bloch, the bonding of the property and converting it to his own use by sale and crediting the lessors with the proceeds, was not only an invasion of the vested rights of Bloch, but malicious in law, and in view of Saloy's express obligation in the authentic act, and the absence of all allegation of fraud, the charge of the judge that Saloy's suit is wrongful, so far as it may injure Bloch, and the reasons given for it are without any error.

So, too, the charge as to the sugar and molasses of the seed cane. It seems impossible to convey the law bearing upon this point in clearer terms than those employed by the trial judge. (Rec., p. 41.)

IV.

There is another bill of exceptions, not numbered, set forth on p. 87 of the record, viz, that the said verdict is not responsive to the issues involved, and is informal and defective, in that it fails to pass upon defendant's reconventional demand; but "notwithstanding defendant's objections, the court ordered the judgment "to be entered up as rendered, because the court held that the jury "had in its verdict passed upon both the original and reconventional demands."

The question is: Is there error in the verdict? If yea, what is it? Is there error in the judgment? If yea, what is it?

The lower judge expresses his entire satisfaction with both verdict and judgment. Both are silent as to that portion of the reconventional demand discussed under bills of exceptions, No. 3, second point.

But it cannot be denied that the jury acted upon the whole reconventional demand. "We, the jury, find in favor of the plaintiff in the sum of $3,812.30, less $312.30, for one hundred sacks rice from St. Sophia plantation." In spite of the objections of the reconvenor, the lower judge so held, and denied the rule for a new trial. Is there any error in this ruling?

In our motion to dismiss the appeal, we strove to convince this court that there was no appellate jurisdiction here, for the amount in judgment really in dispute between these parties did not amount to over $5,000. The reasoning ran in this wise: This suit involves two separate and totally distinct causes of action between plaintiff and defendant: *First*, the plaintiff's against the defendant; *second*, the defendant's reconvention against the plaintiff. The plaintiff claimed $6,266.23, and got verdict and judgment for $3,812 30, whilst reconvenor claimed $6,367, and got verdict and judgment for $312.30. On the main demand, and on the incidental demand, either single or together, tested by the *final action* of the court, there was no jurisdiction; certainly not, on the main demand, as was admitted on both sides; and just as certainly not on the reconvention, *if tested by Louisiana law;* for, whilst the judgment on the main demand was an incontestable *res adjudicata*, the judgment on the reconvention was merely a nonsuit.

The denial of the motion to dismiss was therefore clearly a refusal to adopt the Louisiana law as to the effect of the verdict and judgment on the reconventional demand, and the reasons for this ruling, though they are not set forth in 122 U. S., 646, are plainly and categorically stated in Parks *vs.* Turner, 12 How., 39, 43. "We certainly cannot adopt in this court the practice and mode of proceeding in the appellate court of Louisiana. Unquestionably the force and operation of the verdict when the case is brought here, depends upon the rules of the common law," and *a fortiori* upon the acts of Congress modifying them. The objection now raised is "that the jury in rendering the verdict failed to respond separately to the distinct issues they were sworn to try" on the reconventional demand. This is almost if not quite identical with the point raised in Roach *vs.* Hulings, 16 Peters, 321, in which the court say: "Admitting that this verdict is not technically responsive to the several pleas, it virtually answers and negatives them all; for if all or either of the pleas had been true, the verdict was untrue." Therefore, if there be no error in the previous bills of exceptions, this last bill of exceptions cannot be sustained under sections 954 and 1005 R. S. U. S. Whether there is error in the verdict and judgment in declaring the amount due on one count of the reconventional demand and

in keeping entire silence on the other count would, therefore, seem to depend upon the certainty of the language employed by the jury and the court. But nothing can be clearer in law than this language. It is something more than being merely certain to a common intent, as in Litter *vs.* Green, 2 Wheat, 306, but to a certain intent in every particular; perhaps, to the judicial eye too certain; for on the assignments of error, where the objection was that the items were stated in the verdict, the court said:

"We have nothing whatever to do with them. The judgment is what we have to deal with, and not its elements, excepting in and through the control of that which leads to it, namely, the evidence and the charge of the court. The jury were not bound to itemize, nor the court to require it to be done."

Del. R. R. *vs.* Burson, 61 Penn'a, 369–381.

Some facts not specially involved in the discussion of the four bills of exception seem to be worthy of attention:

First. Since the definitive judgment of the lower court, the case has been treated by the plaintiff in error as being but *a single judgment* on several causes of action, and not involving an amount over $5,000. (Rec., p. 89, 90.) Motion for writ of error and bond, to operate a *supersedeas.*

Second. The last bill of exceptions is taken apparently from the judgment of the court denying the motion for a new trial. Rec., p. 87, under date of June 8, 1886. The other bills of exception, Rec., p. 21, 29 and 40, are under date of June 9, 1885. Cunningham *vs.* Bell, 5 Mason, 161.

Third. That the testimony in the case has not been made part of the record.

These facts give rise to the suggestion that there must be some fault in the pleadings, so far as the reconvention is concerned, in claiming rent of the plantations from Bloch. If this claim be unfounded, empty and simulated, merely colorable and without substance, and such as only gives a *prima facie* appellate jurisdiction by the amount claimed, $6,017, "balance due him for rent;" *i. e.*, due to Saloy by Bloch, it is not perceived how the court or jury below could have acted otherwise than they did, nor how your Honors can now give any relief to the plaintiff in error in regard to it. It would involve a solution of the abstract question in no way involved herein: What is the character of the verdict and judgment below? Are they conclusive or not upon what we have called the simulated pleading?

Respectfully submitted.

WILLIAM S. BENEDICT,
CHARLES W. HORNOR,
Attorneys for Defendant in Error.

WASHINGTON, D. C., *May* 22, 1888.